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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 21, 2013

10:03 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc no. 4152, 4153, 4157) Plan Proponents' Motion for an Order (I) Approving Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan Proponents' Joint Chapter 11 Plan, (III) Approving the Form of Ballots, (IV) Scheduling a Hearing on Confirmation of the Plan, (V) Approving Procedures for Notice of the Confirmation Hearing and for Filing Objections to Confirmation of the Plan, and (VI) Granting Related Relief.

(CC: Doc# 4451) Joint Motion Pursuant to 11 U.S.C. 105 and Fed. R. Bankr. P. 7023 and 9019 for an Order (1) Granting Class Certification for Purposes of Settlement Only, (2) Appointment Class Representative and Class Counsel for Purposes of Settlement Only, (3) Preliminarily Approving the Settlement Agreement Between Plaintiffs, On Their Own Behalf and On Behalf of the Class of Similarly Situated Persons, and the Debtors, (4) Approving the Form and Manner of Notice to the Class, (5) Scheduling a Fairness Hearing to Consider Approval of the Settlement on a Final Basis and Related Relief and (6) Approving the Settlement Agreement on a Final Basis and Granting Related Relief.

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2 Doc# 4555 Motion to Extend Exclusivity Period for Filing a
3 Chapter 11 Plan and Disclosure Statement / Debtors' Motion for
4 the Entry of an Order Further Extending Their Exclusive Periods
5 to File a Chapter 11 Plan and Solicit Acceptances Thereof
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1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020. Mr. Marinuzzi?

4 MR. MARINUZZI: Good morning, Your Honor. For the
5 record, Lorenzo Marinuzzi, Morrison & Foerster, on behalf of
6 the debtors. Your Honor, the agenda for today's hearing is
7 fairly short and largely uncontested -- the agenda. Not the
8 papers, the agenda.

9 The first matter on the agenda on page 1 is the motion
10 for approval of the settlement between the debtors and the
11 Kessler class plaintiffs. And for that I'm going to cede the
12 podium to my partner Norman Rosenbaum.

13 THE COURT: Okay.

14 MR. ROSENBAUM: Good morning, Your Honor.

15 THE COURT: Good morning, Mr. Rosenbaum.

16 MR. ROSENBAUM: Norm Rosenbaum, Morrison & Foerster
17 for the debtors.

18 Your Honor, this is the joint motion of the debtors
19 and the representatives of the Kessler settlement class, for
20 preliminary and final approval of the settlement reached with
21 the putative class --

22 THE COURT: Preliminary.

23 MR. ROSENBAUM: -- under Section 105 of the Bankruptcy
24 Code, Bankruptcy Rule --

25 THE COURT: It's the preliminary approval, isn't it?

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1 Preliminary approval?

2 MR. ROSENBAUM: Sorry, Your Honor?

3 THE COURT: Preliminary approval, not final?

4 MR. ROSENBAUM: This morning it's preliminary
5 approval.

6 THE COURT: Yes. You said preliminary and final.

7 MR. ROSENBAUM: That's correct, Your Honor. The
8 motion is for preliminary and then subsequently final approval.

9 THE COURT: Okay.

10 MR. ROSENBAUM: Assuming we obtain preliminary
11 approval this morning.

12 THE COURT: Let me get right to the point, Mr.
13 Rosenbaum. I know you're presenting this as uncontested, and I
14 know that PNC filed a limited objection reserving their
15 objection for a final hearing. But I think you're inviting
16 error on my part, and you're going to need to respond to it,
17 probably in a brief, but -- and it's the following.

18 Denney v. Deutsche Bank is controlling Second Circuit
19 law, 443 F.3d 253, on the issue of whether the methodology for
20 judgment reduction can be left to "applicable law", and
21 specifically says it can't. Now, they identify two problems
22 with leaving it to applicable law. One is potential prejudice
23 to the nonsettling defendants. PNC can take care of itself.
24 If they wish to put the issue off until the final hearing, I
25 probably wouldn't have a problem with that.

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1 But in Denney v. Deutsche Bank, at pages 274 and 275,
2 the Second Circuit, in adopting the Fourth Circuit Rule in In
3 re Jiffy Lube 927 F.2d 155, identifies two problems with not
4 identifying the methodology. And it quotes from Jiffy Lube,
5 but it starts by saying, "We are persuaded by the reasoning of
6 the Fourth Circuit in Jiffy Lube." And Jiffy Lube indicates
7 that, in addition to prejudice to nonsettling defendants, it
8 "may deprive the plaintiff class members of information
9 affecting their ability to assess fairly the merits of the
10 settlement."

11 Then it goes on with a longer quote: "As to
12 plaintiffs" -- this is a quote -- "As to plaintiffs, it is
13 clear that the method of setoff chosen affects the desirability
14 of a proposed partial settlement. For example, plaintiffs bear
15 the risk of a 'bad' settlement under the 'proportionate' rule,
16 while under the 'pro tanto' rule the risk passes to the non-
17 settling defendants and plaintiffs gain more certainty from the
18 earlier resolution of the setoff figure. Moreover, the
19 'proportionate' method entails a delay in ascertaining the
20 final amount of setoff which makes it difficult to frame a
21 notice to the class that fairly presents the merits of the
22 proposed settlement. If the 'proportionate' method is used,
23 the notice to plaintiffs should inform them of this
24 shortcoming."

25 None of that is there. You're inviting error on my

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1 part in preliminarily approving a settlement and approving
2 class action notice to a settlement that provides for judgment
3 reduction to be subject to applicable law. Do you have a
4 response to that?

5 MR. ROSENBAUM: Your Honor, I don't have a response to
6 that for the reasons that we --

7 THE COURT: I don't like people inviting error.

8 MR. ROSENBAUM: I understand, Your Honor. I don't
9 have a response to it. Curtis Mallet, our conflicts counsel,
10 is handling that issue with PNC Bank. Based on Your Honor's
11 comments, I think that we would need, as a group, to reconvene
12 and consider that in terms of what the notice should provide.
13 And the --

14 THE COURT: Well, it's more than what the notice
15 should provide, because what the Second Circuit in Denney
16 said -- they reversed Judge Scheindlin, who had approved a
17 class action settlement that had had the "applicable law"
18 provision. They said no, you have to specify what the
19 methodology is. So it wasn't at the preliminary approval, but
20 its discussion in quotation from Jiffy Lube about notice to the
21 class to evaluate, people are going to decide whether to opt
22 out of a settlement.

23 So we'll put this off. You're going to have to go
24 back to the drawing board. If you want to -- if you plan to
25 adhere to the settlement as drafted, then you're going to have

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1 to submit a brief to persuade me why it's appropriate to send
2 notice to the class that believes this issue that the Second
3 Circuit should be -- says needs to be resolved in the
4 settlement, why it should be put off. Okay?

5 So the motion is -- I'll adjourn it, I won't deny it
6 at this stage. But you know what my reaction to it is.

7 MR. ROSENBAUM: Your Honor, could we adjourn it to one
8 of the hearings for next week?

9 THE COURT: Well, you're going to need -- you need to
10 advise me how you're going to deal with it before I'll reset it
11 on the calendar. If you plan to proceed with the settlement as
12 drafted and the notice as drafted, I need briefs to support a
13 preliminary approval of a settlement with a methodology -- well,
14 leaving the methodology undefined, as the Second Circuit says
15 you can't do, in Denney v. Deutsche Bank.

16 So I'm not going to set it for a hearing until I hear
17 back from the parties as to how they wish to proceed.

18 MR. ROSENBAUM: Thank you, Your Honor. Your Honor --

19 THE COURT: What's next on the agenda?

20 MR. ROSENBAUM: The next matter on the agenda is the
21 motion for extension of exclusivity --

22 THE COURT: Okay.

23 MR. ROSENBAUM: -- and Mr. Goren will be handling
24 that.

25 THE COURT: Mr. Goren?

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1 Let me just -- before you go on, Mr. Goren. That's
2 the only issue I had with giving preliminary approval of the
3 Kessler class settlement. I want to make it clear. But it's a
4 big issue.

5 MR. ECKSTEIN: Your Honor, if I may just -- I don't
6 know -- Kenneth Eckstein on behalf of the creditors' committee.

7 I don't know whether it will be possible or not, but
8 it might be useful to at least adjourn this to the end of the
9 calendar to see whether or not this is a discrete issue, if
10 there's a way to address it to Your Honor's satisfaction this
11 morning, at least for purposes of preliminary approval. We
12 can --

13 THE COURT: We can put it to the end of the calendar.

14 MR. ECKSTEIN: I think that would be useful, Your
15 Honor.

16 THE COURT: I don't know that you're going to --

17 MR. ECKSTEIN: If not, we'll just adjourn it.

18 THE COURT: Anything other than a settlement agreement
19 that includes -- that defines the methodology is going to
20 satisfy me, but --

21 MR. ECKSTEIN: Understood.

22 THE COURT: -- we'll put it at the end of the
23 calendar.

24 Go ahead, Mr. Goren.

25 MR. GOREN: Thank you, Your Honor. Todd Goren,

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1 Morrison & Foerster. We filed our motion to extend
2 exclusivity. This, if granted, would be our final motion. It
3 would extend exclusivity to -- plan exclusivity to November
4 14th and solicitation exclusivity until January 14th, the
5 maximum extensions permitted by the Code.

6 THE COURT: Anybody wish to be heard?

7 Granted.

8 MR. GOREN: Thank you, Your Honor.

9 MR. MARINUZZI: Your Honor, the next item on the
10 agenda is on page 4. I apologize. And this is the series of
11 motions dealing with the professionals involved in the
12 foreclosure review.

13 THE COURT: Yes.

14 MR. MARINUZZI: We're just going to continue it on a
15 further interim basis to the 24th of September. I believe that
16 forms of the order were submitted to chambers already.

17 THE COURT: That's fine, Mr. Marinuzzi.

18 MR. MARINUZZI: Okay, thank you.

19 THE COURT: Thank you.

20 MR. MARINUZZI: Your Honor, that I believe brings us
21 to item number 4 on page 9, and that's the motion of the plan
22 proponents seeking entry of an order approving the disclosure
23 statement, approving procedures for the solicitation and
24 tabulation of votes to accept or reject the plan, approving the
25 form of ballots, scheduling a confirmation hearing, approving

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1 confirmation notice, and related relief.

2 The motion was filed along with the Chapter 11 --
3 joint Chapter 11 plan and disclosure statement on July 3rd.
4 The filing of those documents followed the Court's approval on
5 June 26th of the debtors' entry into a plan support agreement
6 with the creditors' committee, AFI, and some -- a number of
7 important consenting creditors.

8 The plan support agreement, in turn, was the product
9 of months of negotiations that Mr. Eckstein, I know, would like
10 to speak to the Court about shortly. The process began in
11 earnest at the end of last year when a mediator was appointed,
12 and under Judge Peck's guidance, it led to the filing of the
13 plan and disclosure statement, and what we hope will be
14 confirmation of a plan in November -- November of 2013.

15 The framework for the plan is the global settlement.
16 As I said, Mr. Eckstein's going to address the global
17 settlement with the Court shortly.

18 As of the objection deadline for the disclosure
19 statement motion, and actually for a couple of days thereafter,
20 we received a total of twenty objections, and six or seven --
21 seven actually, are reservations of rights. And we'll flip
22 through, hopefully, if Your Honor permits, the objection chart
23 that we prepared. But Your Honor probably noted already that
24 we've been able to resolve ten of the objections. And of the
25 ten that remain, I think at least half of them are objections

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1 that we don't really consider to be objections to the
2 disclosure statement. And even for the remaining ones, we've
3 been able to resolve some discrete issues within the objections
4 themselves.

5 I'd like to provide the Court with a general overview
6 of the plan. The plan sets up three debtor groups for
7 distribution purposes. You've got the ResCap debtors, which is
8 the parent and the two immediate subs. You've got the GMACM
9 debtors, which consist of GMACM and twenty sub-debtors under
10 the GMACM arm of the corporate chart. And then you have the
11 RFC debtors, which is Residential Funding and twenty-six
12 debtors underneath Residential Funding, or sub-classes, as we
13 refer to them in the plan. And the idea was to capture within
14 those three entities the debtors that naturally rolled up into
15 the main debtor entities in this case.

16 As required under Section 1129, the plan provides for
17 payment in full of administrative claims and priority claims
18 and full payment of what we term "other secured claims". We'll
19 talk to the JSNs in a minute.

20 Your Honor, in the disclosure statement -- and there
21 are going to be page references, Your Honor, in my narrative,
22 and also within the chart to pages of the disclosure statement.
23 And those would be page references to the marked disclosure
24 statement that was filed last night. Hopefully, Your Honor has
25 a binder like the one I'm holding up. And if Your Hon --

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1 great.

2 And so this is the marked version of the plan. And
3 Your Honor, on pages 9 through 15 of the marked plan, it sets
4 out the expected recoveries or projected recoveries in the
5 disclosure statement; and the recoveries for unsecured
6 creditors will vary depending upon whether their claims are
7 against the ResCap debtors, where the estimate is 31.5 to 41.9
8 percent; the GMACM debtors, where it's currently 26 to 34.7
9 percent; and the RFC debtors, where we're at 7.8 to 10.3
10 percent.

11 The plan will establish various trusts to effectuate
12 the distribution. So we've got the main liquidating trust that
13 will liquidated the debtors' remaining assets, make
14 distributions to creditors in the form of trust units which
15 will be followed up by cash distributions to the units. And
16 the liquidating trust makes those distributions to creditors
17 other than borrowers, the New Jersey Carpenters claims class,
18 and in some fashion to the members of the private securities
19 claims class.

20 And so the borrowers will have distributions in the
21 form of an actual cash distribution into a borrower trust,
22 which initially will be funded with an amount up to 57.6
23 million dollars. And there's a true-up concept with respect to
24 that trust, that as we get closer to the effective date of the
25 plan, and we file our plan supplement, we'll have a better

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1 handle on the overall claims within GMACM within RFC, and the
2 idea is to provide to the borrowers of GMACM and the respective
3 RFC, a recovery that's comparable to what other unsecured
4 creditors are getting at those respective debtor entities.

5 THE COURT: Did you just add another -- ETS, is
6 that --

7 MR. MARINUZZI: Yes, Your Honor. And I'm going to
8 talk about the changes -- the major changes that we made. But
9 on ETS, what we've done -- and this is a change from the
10 originally filed disclosure statement -- shortly -- we didn't
11 want to have an issue with best interests with respect to any
12 unsecured creditor of ETS. And so when we looked at ETS -- and
13 it's not a big driver of value recovery -- the projected assets
14 at ETS are something like twelve million dollars. And the
15 expected claims at ETS are five million dollars.

16 So naturally, in a liquidation, it becomes an issue.
17 So what we don't want anybody to complain about with respect to
18 our plan is that somehow the way we've grouped the three debtor
19 groups together is impacting their recovery. So for ETS, we've
20 given them a separate class --

21 THE COURT: You've carved ETS out?

22 MR. MARINUZZI: Correct. They've got their own class.
23 Right.

24 The other trust that's been established is a trust for
25 the beneficiaries of the New Jersey Carpenters class, or the

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1 creditors within that class. And that's 100 million dollars in
2 cash less the costs of noticing out the settlement in the
3 district court. And then we have a third trust which is the
4 private securities claimants trust. That trust is not going to
5 receive cash. That trust will get 235 million-dollars'-worth
6 of distributable units from the liquidating trust.

7 Now, through this combination of trusts, the plan
8 proponents intend to make distributions of value to creditors.
9 Where is that value coming from? It's coming from cash on
10 hand. It's coming from cash realized from the monetization of
11 the remaining assets, primarily the FHAVA loans. And it's
12 coming principally from the AFI contribution, which really is
13 the centerpiece of the global settlement that Mr. Eckstein will
14 talk about in a minute.

15 So Your Honor, I think what I'd like to do is I'd cede
16 the podium to Mr. Eckstein for his opening remarks. He'll
17 describe the consensus that was achieved through the global
18 settlement. Then, when he's done, I'd like to describe for the
19 Court the other changes that were made to the plan as it exists
20 today. And we already touched on one of them. Then I'd like
21 to generally describe the requirements for approval of the
22 disclosure statement, and then flip the chart and try and do it
23 in a manner that's not painful to indicate what's been
24 resolved, what hasn't been resolved, and to the extent it's
25 been resolved, how it's been resolved.

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1 With that, I'll turn it over to Mr. Eckstein.

2 MR. ECKSTEIN: Your Honor, good morning. Kenneth
3 Eckstein of Kramer Levin on behalf of the official creditors'
4 committee.

5 As Mr. Marinuzzi has stated, we are very pleased to be
6 able to present to the Court a largely consensual disclosure
7 statement hearing. We certainly haven't resolved all of the
8 objections. And I anticipate that there are going to be
9 significant issues that Your Honor may raise that are relevant
10 both to disclosure and to the plan structure generally. But
11 the fact of the matter is that we stand here today with a great
12 deal of consensus in this case generally and in terms of moving
13 through this significant milestone in the plan process.

14 I think the consensus that we see today really is
15 attributed to the fact that the global settlement really had an
16 unprecedented level of breadth that encompassed a wide array of
17 diverse creditors who only a few months ago were poised to
18 embark upon what Your Honor knows was unfettered litigation
19 that would have plunged this case into years of delay, many,
20 many tens of millions of dollars of additional expense, with no
21 clear path toward a resolution.

22 I'm actually mindful, Your Honor, of an admonition
23 that Mr. Shore and Mr. Uzzi's firms made to the Court and to
24 the parties as recently as the end of April, where they warned
25 all of us that in the absence of a global negotiated resolution

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1 of this case, we were going to be plunged into administrative
2 insolvency. And they warned that a negotiated resolution to
3 this case was necessary in order to avoid an unacceptable
4 alternative for this case. And I think that that is a
5 noteworthy observation which we certainly endorse, and this is
6 certainly a point where we are completely in line with the
7 views that were expressed by the JSNs that a negotiated
8 resolution --

9 THE COURT: It may be the only time.

10 MR. ECKSTEIN: Excuse me?

11 THE COURT: It may be the only time you're completely
12 in agreement.

13 MR. ECKSTEIN: It may be. But I think it's important
14 to note at this stage of the case that a negotiated resolution
15 of the case is the right path. And I think it is important not
16 to lose sight of that.

17 Before walking through the specific objections, which
18 Mr. Marinuzzi will do, I think it's useful to take a moment to
19 just put the plan and disclosure statement in context. Your
20 Honor recalls it was less than eighteen months ago when this
21 case was commenced with what was described as essentially a
22 pre-packaged plan, although it had limited consensus among the
23 major creditor groups. The majority of creditors in this case
24 were not supportive of the 750-million-dollar AFI settlement
25 that was proposed. The majority of creditors were not

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1 supportive of the proposed RMBS settlement. There was nothing
2 in the plan to resolve four billion dollars of monoline claims.
3 There was no proposed resolution of billions of dollars of
4 securities claims, over two and a half billion of private
5 securities claims, and thirteen billion dollars of class action
6 securities claims.

7 The plan didn't have the support of the more than
8 billion dollars of senior unsecured notes. And the proposed
9 plan did not address hundreds of millions of dollars of
10 individual and class action borrower claims.

11 The plan structure as originally contemplated would
12 have provided de minimis recovery to unsecured creditors, and
13 that could have only been realized after years of difficult
14 intercreditor and interdebtor litigation, with significant
15 expense and delay.

16 Ultimately, the case moved in a different direction
17 from the initial plan, and the debtor focused on pursuing and
18 closing two significant major asset sales that brought in
19 approximately four and a half billion dollars of proceeds in an
20 unprecedented sale of the mortgage business in the midst of a
21 Chapter 11 case.

22 There were then four major developments in this case
23 that realigned the direction of the case. First, Your Honor
24 appointed Judge Peck as a mediator to attempt to resolve both
25 estate and third-party claims against Ally, as well as

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1 intercreditor disputes. And we all owe a great deal of
2 gratitude to Judge Peck for the tireless efforts he continues
3 to devote to the case.

4 Second, the debtors appointed Lewis Kruger as their
5 CRO to help facilitate negotiations between the parties.

6 Third, the committee, having investigated claims and causes of
7 action on a parallel path with the examiner's investigation,
8 the committee presented a detailed litigation analysis to Ally
9 that became the framework for extensive negotiations with Ally
10 over a potential resolution of extensive estate and third-party
11 claims that existed and that basically hung over this case.

12 Fourth, the debtors ultimately terminated their pre-petition
13 plan support agreement and focused instead on achieving a
14 global settlement that was in the best interests of and had the
15 support of all of the estates' creditors.

16 Only after many months of lengthy negotiations and
17 numerous mediation sessions among all parties-in-interest in
18 the case, the debtors, the committee, Ally, and the consenting
19 claimants, reached an agreement on the global compromise and
20 settlement that is embodied in the current plan.

21 I know the Court is well aware of the details of the
22 global settlement, so I'm going to only recount it briefly.
23 The centerpiece of the global settlement is a greatly enhanced
24 contribution from Ally, representing 2.1 billion dollars,
25 approximately three times as much as was agreed to at the

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1 beginning of these cases, that is being offered in exchange for
2 broad estate and third-party releases that will resolve not
3 only potential claims that reside in the estate, but litigation
4 that has been pending in both state and federal courts around
5 this country for many years and are being asserted by a wide
6 array of different types of creditors against Ally and its
7 subsidiaries.

8 In addition, the settlement consensually resolves a
9 myriad of different claims. The RMBS claims, the settlement
10 resolves the allowance, priority and allocation of the RMBS
11 claims without the need for a trial in this court. Unlike the
12 original RMBS settlement, the global settlement resolves
13 allocation issues, resolves the treatment of cure claims, and
14 allocates over 800 million dollars of projected recoveries in a
15 manner that has the support of the RMBS trustees and the RMBS
16 investors.

17 As Your Honor knows, the committee, from the outset of
18 this case, urged that a resolution of these claims, if
19 possible, should be pursued in the context of a global
20 settlement, and that has been accomplished.

21 Monoline claims. The settlement resolves the
22 allowance, priority and allocation of the monoline claims,
23 eliminating the intercreditor disputes among the monolines and
24 the RMBS trustees, and resolving disputes concerning
25 subordination of monoline claims, the amount of monoline

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1 claims, and it also resolves longstanding litigation asserted
2 by the various monolines against AFI, pending, as I said,
3 outside of the bankruptcy court.

4 Both the RMBS claims and the monoline claims
5 represented unprecedented litigation with little for the Court
6 to look to as a basis to resolve the claims. And absent a
7 global settlement, we believe it is unquestionable that these
8 cases would have entailed difficult resolutions in this court
9 and almost certainly appeals throughout the appellate system,
10 taking many years and uncertainty to resolve.

11 Securities claims. The plan resolves billions of
12 dollars in securities claims against the debtors and Ally and
13 its subsidiaries, including the New Jersey Carpenters class
14 action that was recently certified in the district court.
15 These are billions of dollars of securities claims. Again,
16 absent a global settlement, very difficult, lengthy resolutions
17 would have been required.

18 Borrower claims. Your Honor, we recognized early on
19 that borrowers have very substantial claims in this case.
20 These were generally held by individuals. And it was going to
21 be important in connection with any resolution of this case to
22 ensure that the plan properly and adequately addressed the
23 needs and the interests of borrowers.

24 Your Honor just a moment ago heard a preliminary
25 proposed settlement of a major borrower class action. The plan

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1 resolves, through a separate trust that provides cash for
2 borrowers, rather than payments over time -- the plan provides
3 for a cash distribution to borrowers, in addition to allowing
4 borrowers to receive their share of 230 million dollars,
5 recently paid by the debtor under the Federal Reserve Board
6 consent decree. The collection of those two distributions, we
7 believe, provides a very robust resolution of borrower claims
8 in the context of this Chapter 11 case.

9 Senior unsecured notes. The settlement resolves the
10 claims of the senior unsecured notes; calls for a stay of
11 prosecution of Wilmington Trust's pending motion for it to
12 individually pursue claims that Wilmington Trust has, and on
13 behalf of the ResCap Holding Company, against Ally.

14 The junior secured notes. Although the JSNs, as we
15 know, do not support the settlement, the settlement
16 substantially improves upon the treatment that was originally
17 provided to the JSNs in the plan that was contemplated at the
18 outset of the case, calls for the payment of the JSN claims in
19 full, and provides the JSNs, if we cannot resolve whatever
20 remaining issues are open, with the opportunity to receive
21 post-petition interest, if the Court determines that the JSNs,
22 in fact, are oversecured.

23 Finally, intercreditor and interdebtor disputes. The
24 settlement resolves numerous complex intercreditor and
25 interdebtor issues in this case, including the threat of

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1 substantive consolidation, the allocation of administrative
2 expenses, interdebtor subrogation and contribution claims, and
3 the treatment of intercompany claims, including over fifteen
4 billion dollars of intercompany claims that were released by
5 the debtors during the years leading up to the filing of this
6 Chapter 11 case. Again, all of these issues, absent a global
7 settlement, would have required painstaking litigation and
8 resolution by this Court and by appellate courts.

9 Your Honor, I think it's fair to say that no party in
10 this case is fully satisfied with the global settlement. No
11 party is getting everything that they wanted. And every party
12 is forgoing substantial recoveries or litigation rights that
13 they believe could have been achieved as an alternative. And
14 that includes Ally, that has agreed to make a very substantial
15 contribution as an alternative to years of litigation. That is
16 the essential ingredient of a global settlement.

17 However, the signatories to the plan support agreement
18 and the other parties that have agreed to support the plan
19 since it was entered into, believe that the global settlement
20 reflects a fair and prudent resolution of numerous, complex and
21 uncertain disputes achieved in fewer than eighteen months since
22 the beginning of this case.

23 A few parties have raised narrow and discrete issues
24 regarding their plan treatment. Only two parties, we believe,
25 have previewed serious or fundamental disagreement with their

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1 treatment under the plan: that being the JSNs and the FHFA.
2 Ironically, in the case of the JSNs, the plan seeks to pay them
3 in full, and the FHFA has really the unique treatment in this
4 case of really being the only constituency not being subject to
5 the proposed third-party release.

6 THE COURT: I have some questions about that, but I'll
7 wait until we get to their objection.

8 MR. ECKSTEIN: Your Honor, we recognized that the plan
9 support agreement needed to deal with the parties that were not
10 on board with the settlement, and we think we have done so
11 fairly, and in fact, generously.

12 In connection with the JSNs, in addition to paying
13 their pre-petition claims in full and providing an opportunity
14 for them to litigate the entitlement to post-petition interest,
15 we have now made further clarifications at the request of the
16 JSNs, to confirm that the JSNs can, in fact, prosecute the
17 arguments that they want both with respect to their collateral
18 position, including their entitlement to assert a lien against
19 the AFI settlement, and including their argument that they're
20 entitled to adequate protection claims in connection with the
21 proposed resolution of intercompany claims.

22 We think this is an important clarification, because
23 we believe with these modifications that are being offered in
24 connection with the amended disclosure statement, we eliminate
25 once and for all the suggestion that the plan is being held

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1 hostage to the litigation with the JSNs, and we're hopeful that
2 with these clarifications, once the JSNs have had an
3 opportunity to reflect upon the modifications to the disclosure
4 statement, they will reach the conclusion that they need not
5 object to the global settlement and the plan, and can simply
6 focus the remaining litigation on whether or not, or the extent
7 to which they may or may not be oversecured.

8 That may be aspirational, but we have made this change
9 in the hope of eliminating what we think was the last remaining
10 dispute concerning the structure of their treatment. And we
11 think it's an important modification that frankly has been made
12 without a negotiation at this point, without a settlement.

13 The FHFA, for its part, as we say, has been carved out
14 from the third-party release under the plan, and will be free
15 to pursue its claims, if any, against Ally. The FHFA, early on
16 in this case, dropped the debtor from its litigation,
17 reflecting its focus on the fact that it was seeking to enforce
18 its claims against Ally, and that its claims against ResCap
19 certainly were not a priority of the FHFA during this Chapter
20 11.

21 THE COURT: But they filed a proof of claim -- proof
22 of claims -- I don't know how many there are --

23 MR. ECKSTEIN: They did file a proof of claim. They
24 dropped their -- they dropped ResCap from the litigation.

25 THE COURT: Well, let me ask it now. And this may be

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1 confirmation issue. And let me ask -- the first question is:
2 am I correct that if at the time of confirmation the Court
3 concludes that the best interests test is not satisfied as to
4 any defined class of creditors, that the plan provides that the
5 distribution to that class can be increased? Is that -- I
6 thought I read that in a lot of the paper I read about the
7 disclosure statement.

8 Here's the reason I'm asking the question. Mr.
9 Marinuzzi raised -- he talked about the three, and now you've
10 added ETS as a separate bucket. The plan and the disclosure
11 statement describes that the FHFA claim is included as a class
12 in the RFC bucket, and says that they'd get three percent. The
13 plan projects -- Mr. Marinuzzi pointed to this in the black-
14 line at pages 14 and 15 -- the distribution to RFC of 7.8 to
15 unsecured creditors of RFC -- 7.8 to 10.3 percent. The plan
16 provides for three percent to FHFA.

17 I don't know in a liquidation analysis what, if
18 anything -- and I know the plan reserves the right to argue
19 that their claim is subordinated -- but I guess somebody's got
20 to make me understand how FHFA -- and I understand they're not
21 signing on to the release of AFI -- how that in itself
22 justifies their getting the smaller distribution from the
23 debtors' estate.

24 MR. ECKSTEIN: Your Honor, that -- it's an important
25 question. It's one that we've given a fair amount of thought

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1 to. And you're right to point out that the separate treatment
2 of the FHFA, which in fact now, as Your Honor will hear, is two
3 percent rather than three percent -- but it's designed to match
4 what the FHFA would be entitled to in a liquidation. And it
5 contemplates a liquidation would not include the AFI
6 settlement. It would be a Chapter 7 liquidation.

7 THE COURT: So does that mean, in fact, that you're
8 valuing the release to AFI at somewhere between five and eight
9 cents?

10 MR. ECKSTEIN: The concept, Your Honor, is that the
11 proposed treatment to the FHFA would give them what would be
12 available to them as a creditor of RFC in the absence of a
13 settlement -- in the absence of the global settlement. And
14 they would obviously retain their claims against AFI, which
15 they could pursue for whatever recovery they can obtain in
16 litigation or a settlement.

17 And the intent is to comply with the best interests
18 requirements in the Bankruptcy Code. To the extent Your Honor
19 is not comfortable that it satisfies the best interests
20 standard, the plan can be modified to accommodate that. But I
21 think the contemplation is that this is designed to be
22 consistent with the best interest test.

23 THE COURT: It looks to me that you're valuing the
24 release to AFI at somewhere between six and nine cents. We'll
25 come to -- because when we get to the third-party releases,

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1 that's one of the questions I have is what's the -- and I'm not
2 saying you have to for the disclosure statement ascribe a value
3 to the release. But this was the closest that I came to seeing
4 something that actually put a value on it. You're saying if --
5 I thought it was three percent, and now you're telling me it's
6 changed to two percent -- if FHFA doesn't sign on to the plan
7 and agree to release AFI, they get 2 cents, and if they do sign
8 on, they stand to get 7.8 to 10.3 cents.

9 MR. ECKSTEIN: That's essentially right, Your Honor.

10 THE COURT: And that seems to me to be putting a value
11 on the release.

12 MR. ECKSTEIN: Your Honor, if you would compare what's
13 available to RFC creditors without the AFI settlement, I think
14 you would end up with a number like two cents.

15 THE COURT: Well --

16 MR. ECKSTEIN: We can walk through that. But that's
17 essentially --

18 THE COURT: I just want you to know, I've got
19 questions. And this may not be a question for today. This may
20 be -- but look -- and I know Mr. Marinuzzi or you wanted to
21 talk about the standards for a disclosure statement. I'm
22 pretty quite familiar with the standards for a disclosure
23 statement. And a lot of the responses were, oh, it's a
24 confirmation issue, it's a confirmation issue.

25 And that's all well and good, but if there are

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1 provisions that are patently unconfirmable, I have the
2 discretion to put a stop to it now. I hate to go down the road
3 of solicitation, voting, only to find -- to get to the result
4 that I know this plan has things that can't be confirmed. I'm
5 not saying it does. Okay? But that's -- I'm approaching it
6 with that question in mind.

7 There are a number of issues that we'll go through
8 that at least in my mind, raise this question. Are the
9 provision -- unless altered, there are -- let me lay it out
10 now, because this will come up as we go through with some of
11 the objections. The PSA conditioned the supporting claimants'
12 continued support on a plan consistent with the terms of the
13 PSA. The coproponents or the committee and the debtor, but in
14 effect, you've locked yourself in by the provisions of the PSA.

15 And the PSA, I believe, provides that the confirmation
16 order has to be in form and substance satisfactory to the
17 supporting claimants, and which strikes me as you've got my
18 hands completely tied, because there may be things that we're
19 going to talk about today that are all well and good if you
20 want to put off to confirmation, but if I rule in a way that's
21 unfavorable to something you're seeking and then the supporting
22 claimants say, oh, we terminate, I'm really pretty -- this
23 happened -- I have to tell you Mr. Eckstein, and Mr. Marinuzzi,
24 you can talk to your partner Mr. Miller -- this came up in MF
25 Global, and I made clear at the disclosure statement hearing

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1 that if the proponents -- the coproponents of the plan took the
2 position that nothing was going to be -- this is the plan, it
3 either gets approved or not, I made clear, then you're telling
4 me that I have to decide today whether a number of issues would
5 make this plan unconfirmable.

6 They backed off. And ultimately it was provided that
7 the confirmation order would control in the event of any
8 inconsistency between the plan and the confirmation order; and
9 I wasn't restricted on these issues as to what I could do in
10 the confirmation order.

11 But it's a big issue for me, Mr. Eckstein. I don't
12 want to go down -- I've got a trial I haven't scheduled yet for
13 early October. We're going to have a confirmation trial and a
14 contested -- unless you're able to resolve -- contested
15 confirmation trial. There are a whole bunch of significant
16 hurdles, and I don't want to get to the end of that and then I
17 decide that the U.S. Trustee is correct that 1129(a)(4)
18 prevents certain fees from being paid to certain parties, and
19 then I'm told, sorry, Judge, a condition of the PSA and of the
20 continuing support is that the confirmation order has to be in
21 form and in substance satisfactory to the supporting claimants,
22 and they don't support that. So we hate to tell you, but we
23 don't have a plan.

24 I don't -- we're not going to get to that point, Mr.
25 Eckstein. And I'm not -- I don't want to kind of leave it

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1 hanging in the air and hope that people get reasonable at the
2 end when I reach a ruling on some of these contested issues. I
3 understand that Ally is putting a difficult issue to the Court
4 over the third-party nondebtor releases. I understand that is
5 central to the plan and it may rise or fall on what happens
6 with that. Okay. But there are a whole lot of other issues
7 along the way here that some of these objections have raised.
8 And if what I'm being told is it's that or nothing, it's that
9 or a supporting claimant can say we terminate, it's no go.

10 MR. ECKSTEIN: Your Honor, I appreciate your
11 observations and you should appreciate that we anticipated
12 these. And I hope Your Honor notices that there are only two
13 proponents of the plan, the debtor and the committee.

14 THE COURT: I know. But there -- tell me if I'm wrong
15 about this. I read last night that -- and I thought I saw it
16 in the PSA, there's a provision that a confirmation order has
17 to be in form and substance satisfactory to the supporting
18 claimants.

19 MR. ECKSTEIN: Your Honor, I'm --

20 THE COURT: That's taking it out of my control and
21 putting it in the hands of the supporting claimants.

22 MR. ECKSTEIN: Your Honor, I'd like to go back and
23 actually look again at exactly how the documents are structured
24 on that issue, because we were mindful of the fact that we
25 cannot have every party having an absolute veto on every issue,

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1 and that's not what is intended here.

2 THE COURT: You'll find it. Maybe I misread.

3 MR. ECKSTEIN: The parties are not anticipating blue
4 penciling -- wholesale blue penciling. But they recognize that
5 the Court needs discretion. Your Honor correctly points out,
6 it's not just the consenting claimants. Ally also has a very
7 significant stake in how the -- both the plan documents and the
8 order is structured. And to that extent --

9 THE COURT: Yes. That same provision said that Ally
10 had -- it had to be in form and substance satisfactory to Ally.
11 It was a whole list of people that it had to be in form and
12 substance satisfactory to.

13 MR. ECKSTEIN: But I think we have to read very --

14 THE COURT: I was left off that, but --

15 MR. ECKSTEIN: We do need to read very carefully where
16 the consent rights rise and fall, because not every party has
17 consent over every issue, and I don't want Your Honor to
18 believe --

19 THE COURT: So at some point today, people better
20 point it out --

21 MR. ECKSTEIN: Let us come back and address that. But
22 I understand Your Honor's point. And I think that the intent
23 of the parties is consistent with what Your Honor's goal is,
24 that there is -- there needs to be reasonable flexibility as we
25 go through issues, not to have light switch problems. At the

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1 same time I don't want to --

2 THE COURT: I don't want to put myself through an
3 ordeal, which it's going to be over the next couple of
4 months -- only to find out that because I've ruled a certain
5 way on some issues that --

6 MR. ECKSTEIN: Look, Your Honor raised a moment ago --

7 THE COURT: -- it's a do over, call it off.

8 MR. ECKSTEIN: Your Honor raised an important issue a
9 moment ago, in connection with the Kessler settlement that
10 we're going to get to in connection with the plan, and that is
11 the judgment reduction provision. We have judgment reduction
12 provision that is in the plan and is relevant to a variety of
13 settlements, both the private securities claims, the NCUAB
14 settlement. There are other securities settlements where
15 judgment reduction provisions are important, where you have
16 interests of defendants and plaintiffs that are not necessarily
17 always in synch. And there are -- I would --

18 THE COURT: The Denney case that I talked about,
19 doesn't say which methodology has to be used, but you have to
20 say what the methodology is.

21 MR. ECKSTEIN: The plan right now has a proposed
22 structure. Generally, I would endorse the view that the
23 earlier we can get clarity on some of these issues, I think for
24 the sake of all parties, the better. We've tried as best we
25 can to structure it that way. I'll let Mr. Marinuzzi walk

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1 through the points. I think my --

2 THE COURT: I didn't want to divert us, but I wanted
3 to make it clear right away, it's an overriding concern in my
4 mind as we go through this. All well and good. There -- yes,
5 there are a lot of confirmation issues that don't have to be
6 decided now. But on some of these, okay, I'm mindful of the
7 fact that there are -- I'm going to raise another one right
8 now, okay? The scope of the exculpation provision that has
9 been included. Get it out right now. Okay?

10 It first off, as drafted, covers pre-petition and
11 post-petition conduct. And it extends to non-estate
12 fiduciaries. I have an open mind about considering the law,
13 but it is not particularly favorable for exculpation of non-
14 estate fiduciaries. And if what I'm going to be told is that
15 that's an absolute condition of a plan; nobody's going to leave
16 it to your -- if you decide against it, Judge, there's no plan,
17 I want to know that now. Okay? Because I'm not deciding the
18 issue.

19 I'm happy to put that issue off like a lot of other
20 issues, for confirmation. But I don't want somebody holding a
21 gun to my head that says, Judge, you either approve that
22 provision or we go back to square one. Okay? That's -- there
23 are a whole host of issues like -- I pointed to a few of them,
24 that -- I'm not saying there aren't good arguments that can be
25 made for broad exculpation beyond just estate fiduciaries. But

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1 there's a lot of case law -- or there's some case law -- the
2 Second Circuit hasn't ruled on it -- there's some case law from
3 other circuits that does not go your way.

4 And I think, yes, there could be good arguments. And
5 it would be better decided on a full record, not today. But do
6 I want to get to the -- where I know there's a serious issue in
7 a case, do I want to get through everything that has to happen
8 over the next couple of months, only to find out that I either
9 approve it or this all is for naught? I don't want that.

10 MR. ECKSTEIN: And we'll get to the exculpation
11 issues, which again, I think we're sensitive to. We understand
12 the issue. And to the extent --

13 THE COURT: We'll come --

14 MR. ECKSTEIN: -- it's worth --

15 THE COURT: -- I've got a list of --

16 MR. ECKSTEIN: -- speaking about more fully, I'm sure
17 we'll have an opportunity to do so.

18 THE COURT: Okay. All right.

19 MR. ECKSTEIN: I'll let Mr. Marinuzzi --

20 THE COURT: Okay, thank you.

21 MR. ECKSTEIN: -- tackle it first.

22 MR. MARINUZZI: Your Honor, all the issues the Court
23 highlighted, certainly I'm hoping everybody sitting behind me
24 was taking copious notes, understanding --

25 THE COURT: I'm sure they were.

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1 MR. MARINUZZI: -- that this is going to be an issue
2 for confirmation, and they need to recognize that it may not
3 all fall the way they want it to fall at the end of the day. I
4 don't think anybody sitting up here wants the Court or the
5 Court's staff or certainly anybody here, to be working to try
6 to get confirmation of this plan in November, to find out that
7 there's a particular issue that somebody has a concern over
8 that they should have known today might actually not be
9 approved in the plan.

10 So I think it's our job to inform the parties to the
11 PSA that Your Honor raised issues, and people need to be
12 prepared for the outcome that might not be exactly as it's set
13 forth in the plan support agreement. I think that's the
14 responsible thing for us to do, and we'll do that.

15 THE COURT: Okay.

16 MR. MARINUZZI: Your Honor, before I sat down --

17 THE COURT: All right. If you're on the phone, you
18 need to either put your -- you need to put your phone on mute.
19 We're hearing rustling of paper and things like that. So --

20 All right. Go ahead, Mr. Marinuzzi.

21 MR. MARINUZZI: Before I sat down we talked about one
22 change to the plan, and that's a change from the version that
23 was filed on July 3rd, and that was the separate classification
24 for ETS. Mr. Eckstein noted a couple of other ones, but let me
25 just go through them.

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1 Your Honor, AFI has agreed to carve out from the
2 third-party release, Fannie Mae with respect to a particular
3 agreement. Apparently there was a pre-petition agreement with
4 Fannie Mae, and AFI has decided that they're not going to use
5 the carve-out to try to get away from whatever obligations they
6 have under that agreement. And so that's found in the marked
7 plan on page 100.

8 The plan has also been modified to -- the judgment
9 reduction provision in the plan, it was there when we filed it,
10 but it's been modified. We obviously have some homework to do
11 to see how the Second Circuit's decision would apply to the
12 judgment reduction provision in the plan, recognizing that the
13 plan provides -- or won't provide for third-party releases.
14 And there are codefendants and plaintiffs that are suing some
15 of the beneficiaries of the third-party releases in courts
16 other than this bankruptcy court.

17 And so a judgment reduction provision that might be
18 available to a nonsettling defendant in Minnesota, might not be
19 the same one that's set forth in New Jersey, for example. And
20 what we tried to accomplish with the language was to say your
21 litigation in another court outside of bankruptcy, whatever
22 judgment reduction provisions are available to the judge who's
23 presiding over the litigation, they're fully reserved. So
24 plaintiffs aren't prejudiced. Defendants aren't prejudiced.

25 Whatever state you're in, that's what you're subject

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1 to. And that's what we tried to capture in the judgment
2 reduction provision in the plan. We'll look at that case to
3 see how it applies.

4 THE COURT: Yes. I'm not sure that it's going to
5 be -- that Denney, which dealt with a specific class action, is
6 going to be controlling or even persuasive on a plan provision
7 on judgment reduction. I mean, one of the -- but you'll look
8 at it.

9 MR. MARINUZZI: I think that's right. And to think --

10 THE COURT: I don't mean to suggest --

11 MR. MARINUZZI: -- there's a lot --

12 THE COURT: -- that it does.

13 MR. MARINUZZI: -- right. Okay.

14 THE COURT: It does as to the specific class action.

15 MR. MARINUZZI: Right. Right.

16 Your Honor, another change that's been made to the
17 plan is the -- sorry, Your Honor. We already covered ETS.
18 We've also changed --

19 THE COURT: Let me just say --

20 MR. MARINUZZI: Sure.

21 THE COURT: -- and I didn't go back to look. If
22 you've made that change in the plan on judgment reductions, you
23 need to include language -- I think you should include language
24 in the disclosure statement that explains that in different
25 jurisdictions there may be different judgment reduction

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1 provisions that apply. It may have a diff -- different
2 consequences that flow from it. There are at least -- if
3 you've changed it along -- and I didn't -- I must say, I didn't
4 pick up that language change. You probably need some
5 corresponding language for a disclosure statement, that at
6 least flags it. And what the -- what that may mean.

7 MR. MARINUZZI: Okay, Your Honor. It's -- so it's --

8 THE COURT: I'm not writing the language for you,
9 but --

10 MR. MARINUZZI: No, no.

11 THE COURT: -- since you've raised it as a plan
12 change.

13 MR. MARINUZZI: We've modified the plan, we've
14 modified the disclosure statement and added additional
15 disclosure, and that disclosure is found on page 156 --

16 THE COURT: This is of the blackline?

17 MR. MARINUZZI: -- of the blackline of the disclosure
18 statement.

19 THE COURT: Okay. Let me read it.

20 MR. MARINUZZI: Sure.

21 THE COURT: Top of the page?

22 MR. MARINUZZI: Top of the page.

23 (Pause)

24 THE COURT: Okay. I see what you -- yeah, and I'll
25 reflect on it, but that may be enough for this purpose, because

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1 you're not -- this is not purporting to set the rules.

2 MR. MARINUZZI: Correct.

3 THE COURT: Those cases you'll have to --

4 MR. MARINUZZI: Correct.

5 THE COURT: -- do it.

6 MR. MARINUZZI: Your Honor, as Mr. Eckstein noted, the
7 plan has modified the treatment of the FHFA from subordination
8 or three percent to subordination or two percent. And we
9 recognize that's an issue that we have to think about, and I
10 think Mr. Eckstein's point is that we're looking not
11 necessarily at what other creditors are recovering, but whether
12 payment of two percent satisfies the best interests test. And
13 the reason it dropped from three to two is because in the
14 revised liquidation analysis for RFC the liquidation recoveries
15 dropped, so we were trying to fall within that range.
16 Obviously we recognize we have a burden at confirmation to make
17 sure we satisfy the Court with the treatment of the FHFA on
18 best interests test, on fair discrimination. But I wanted to
19 explain to the Court the reason for that drop from three
20 percent to two percent.

21 We've also agreed to modify the plan and disclosure
22 statement for the FHFA to state affirmatively that our
23 determination to subordinate the FHFA's claim will be
24 communicated either through a separate adversary proceeding or
25 by listing them in --

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1 THE COURT: I saw --

2 MR. MARINUZZI: -- the claims.

3 THE COURT: I did look at that last night.

4 MR. MARINUZZI: Okay. Another change to the plan,
5 Your Honor -- this is for the Monoline settlements. We already
6 had settlements with MBIA and FGIC. Now there are settlements
7 with Ambac and Assured that are getting allowed claims under
8 the plan against the GMAC debtors and the RFC debtors.

9 And finally, Your Honor, there's been a modification
10 to the borrower trust funding mechanic. And when I said up to
11 57.6 million, the reason it's up to is because we are currently
12 in the process of trying to satisfy and expunge and settle
13 borrower claims that have been asserted against the debtors,
14 class action and individual borrower claims, and sometimes the
15 settlement that's negotiated is an outright cash payment that
16 satisfies, arguably, administrative and pre-petition claims.
17 And so we want to be encouraged to try to settle as many as we
18 can. If it's the payment of cash, then the amount that's
19 funded into the trust should reflect the fact that some
20 borrower claims, that would otherwise be taking away from trust
21 assets, have been satisfied and the claims withdrawn.

22 THE COURT: The -- Mr. Rosenbaum stepped out to deal
23 with what I raised earlier, but it raised the question in my
24 mind, the distributions to Kessler class members comes out of
25 the borrower trust; is that right?

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1 MR. MARINUZZI: It does. It does, Your Honor.

2 THE COURT: And the settlement allows a claim of,
3 what, 330 million dollars?

4 MR. MARINUZZI: Correct.

5 THE COURT: What's the estimated total amount of
6 claims against the borrower trust?

7 MR. MARINUZZI: Your Honor, I'll have to find it in
8 the disclosure statement, but we factored the amount that the
9 Kessler claim we anticipated would be the allowed amount of the
10 claim, or at least had it earmarked, and factored that into the
11 analysis, adding up the estimates for other borrower claims
12 that we anticipated we'd get to at the end of the day to make
13 sure the numbers fit. I don't have the exact number, but it
14 wasn't -- the agreement with the Kessler plaintiffs doesn't
15 just change the math on where we started.

16 THE COURT: And I guess one question I had, when I
17 thought about it, is you essentially -- other than getting
18 maybe some more votes, you've basically assured a vote of that
19 class in favor by including -- does the 330 million dollar
20 agreed allowed claim of the Kessler class totally overwhelm all
21 other claims in the borrower class such that, assuming you get
22 the requisite number of votes, you're basically guaranteed of
23 getting a vote of the Kessler class in support of the plan?

24 MR. MARINUZZI: Your Honor --

25 THE COURT: If so, do I have any reason to think the

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1 330 million dollar allowed claim is reasonable?

2 MR. MARINUZZI: Your Honor, as Mr. Goren points out,
3 there are billions of claims asserted from borrowers that would
4 get to vote, and under the process that's set forth in the
5 order approving the disclosure statement, unless we take the
6 affirmative action of objecting to those claims, as it stands
7 today, even with the 300-plus million dollar claim of the
8 Kessler claimants, they're not going to be enough to carry the
9 class.

10 THE COURT: Okay. All right. That was just --

11 MR. MARINUZZI: It's an appropriate observation.

12 THE COURT: I mean, I read the settlement papers, and
13 I saw that you were allowing a 330 million dollar claim. The
14 total amount distributable to everybody in that class of
15 creditors, not the class -- the Kessler class is the fifty-
16 seven -- well, that's the base amount.

17 MR. MARINUZZI: The base amount plus a true-up.

18 THE COURT: Right. So --

19 MR. MARINUZZI: Again, Your Honor, at confirmation
20 we're going to have to demonstrate to the Court that the
21 treatment of the borrowers paid to the borrower trust with the
22 funding that's the 57.6, plus or minus, plus the true-up,
23 satisfies the Court that the borrowers are not suffering unfair
24 discrimination. That's our burden; we understand that.

25 THE COURT: All right. Go ahead.

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1 MR. MARINUZZI: Your Honor, so those are the plan
2 changes. On the disclosure statement, I know Your Honor's
3 familiar with the 1125 standard, reasonable information to
4 allow an investor to make an informed decision. We think the
5 disclosure statement, as filed, and especially as amended,
6 provides more than adequate information, provides information
7 on the debtors' business operations, the events leading to the
8 Chapter 11 case, the asset sales, the debtors' post-petition
9 activities, the mediation process, the appointment of Mr.
10 Kruger, who is sitting to my right, the global settlement,
11 which Mr. Eckstein just spoke about, the components and
12 compromises -- the components of the compromises embodied in
13 the plan, the anticipated recoveries under the plan, tax
14 consequences of distributions under the plan, and the mechanics
15 for making the distributions. And so we think there's adequate
16 information for a creditor to an informed judgment about
17 whether to support or reject the plan.

18 So Your Honor, what I'd like to do is flip through the
19 chart --

20 THE COURT: Here's what I would like you to do. I'd
21 like you to go through the chart, and then I'd like to hear --
22 you know, deal with an objection, if anybody else wants to be
23 heard on it. I want to, sort of --

24 MR. MARINUZZI: Understood.

25 THE COURT: -- rather than hear you on all of them --

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1 MR. MARINUZZI: No, no.

2 THE COURT: -- I want to hear them, sort of, one by
3 one, let's hear, and I'll rule.

4 MR. MARINUZZI: I'm just going to suggest --

5 THE COURT: Okay?

6 MR. MARINUZZI: -- that as I got through each
7 objection --

8 THE COURT: Fine.

9 MR. MARINUZZI: -- to give a party an opportunity to
10 respond.

11 THE COURT: Okay.

12 MR. MARINUZZI: So Your Honor, the first objection,
13 and we did this in order -- we broke it down objection,
14 reservation of rights --

15 THE COURT: Yes.

16 MR. MARINUZZI: -- is in the back, and it's done by
17 filing order, docket order.

18 And so the first one is the objection filed by the
19 Nassau County Treasurer. We've resolved that.

20 MR. MARINUZZI: Yeah, anybody else want to be heard
21 with respect to the Nassau County Treasurer?

22 All right. I'm satisfied with your resolution.

23 MR. MARINUZZI: Thank you. Your Honor, the next one
24 is docket number 4388. This is the objection of Wendy Alison
25 Nora. We were unable to resolve her objection, but we did make

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1 material inserts or modifications to the disclosure statement
2 to provide more detail on the borrower trust payments.

3 THE COURT: I saw the changes. Is Ms. Nora present or
4 on the phone? Ms. Nora, are you on the telephone?

5 All right. The Court has reviewed the objections to
6 the disclosure statement by Wendy Alison Nora. It's ECF docket
7 4388. The Court has also looked at the modification to the
8 disclosure statement that the debtors have made. The
9 objection's overruled.

10 MR. MARINUZZI: Thank you, Your Honor. The next
11 objection is the objection of the San Bernardino taxing
12 authority. We were unable to resolve that objection, but we
13 have provided more specificity and language regarding the
14 treatment of property tax claims and that tax liens remain.

15 THE COURT: Is counsel for San Bernardino taxing
16 authority present in court or on telephone?

17 MS. ROMERO: On telephone, Your Honor. This is Ms.
18 Romero, Martha Romero, representing the San Bernardino County,
19 California, and it's really early out here.

20 THE COURT: Thank you. I'll hear your argument now.

21 MS. ROMERO: Okay. Well, Your Honor, we filed an
22 objection primarily because the only section that we could find
23 our claims to be addressed in was the priority claim section,
24 and we are not a priority claim. And so we had numerous
25 conversations with counsel with regard that we're not a

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1 priority claim; we are a 506(b) claim.

2 And so then late yesterday they assured me too that we
3 would be covered under a class called "other secured claims".
4 But "other secured claims" doesn't mention at all any, really
5 specific treatment or unspecific treatment for tax claims. And
6 so we provided some language with respect to the payment of tax
7 claims, and it was at a late hour so we haven't been able to
8 resolve that issue.

9 But if we were included in the "other secured claims"
10 section, I told them -- or I stated that the language was sort
11 of insufficient in that it doesn't mention that it also
12 includes tax claims. But it doesn't also mention anything
13 about retaining our tax liens. It doesn't mention the interest
14 rate. It doesn't mention that the claim has to be paid with
15 all applicable costs, fees, and charges, as required under
16 506(b).

17 In addition to that, it doesn't mention any -- the
18 reply brief says that some of our properties will be dealt with
19 in the liquidating trust and may be liquidated and sold, and
20 there's no language that even addresses that at all, about how
21 they will be paid, if they are liquidated and sold.

22 And so that's why we filed our objection. The "other
23 secured claims", the only place that I found it -- I only got
24 the blackline revision of the disclosure statement, and that's
25 on page 18. But it's a pretty general paragraph about other

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1 secured claims.

2 THE COURT: Mr. Marinuzzi, do you want to respond?

3 MR. MARINUZZI: Sure, Your Honor.

4 THE COURT: I see counsel's point. The language
5 you've added is dealing with 503, not 506.

6 MR. MARINUZZI: Your Honor, the definition of "other
7 secured claims" is any -- it's very broad.

8 THE COURT: Where is it?

9 MR. MARINUZZI: It's --

10 THE COURT: What page?

11 MR. MARINUZZI: It's in the plan, page 22. "Other
12 secured claim" means any secured claim, other than a junior
13 secured notes claim.

14 THE COURT: But where in the disclosure statement do
15 you deal with this point?

16 MR. MARINUZZI: Your Honor, there is additional
17 language on page 121 and 123 --

18 THE COURT: Of the blackline?

19 MR. MARINUZZI: -- of the blackline. And the priority
20 tax session is on page 123.

21 THE COURT: Right.

22 MR. MARINUZZI: And what we've done is we've referred
23 to the statute requirements of 1129(a)(9)(C) and Section 511,
24 which sets forth the payment of interest. And what we tried to
25 do, and also reinstate --

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1 THE COURT: But I think counsel's point is that this
2 is -- they say they have a 506 claim, not a 503 claim. So on
3 page 123, you're dealing with priority tax claims, which isn't
4 necessarily the secured tax claims, that it wouldn't -- did you
5 get language from --

6 MR. MARINUZZI: We did, Your Honor --

7 THE COURT: -- counsel?

8 MR. MARINUZZI: -- we got language last night, and the
9 way I read that language suggested that we are required to pay
10 the secured tax claims upon transfer to the trust, simply
11 because the way most tax lien statutes work is on January 1st
12 of the calendar year there exists, automatically, by statute, a
13 perfected secured claim for the value of the property or the
14 value of the taxes to be assessed for the entirety of the year.

15 THE COURT: Yes.

16 MR. MARINUZZI: And so if there's an issue that taxes
17 aren't paid, that's one issue, but if there's an issue that the
18 taxes are being paid and this is a real property that's going
19 to be assigned to the trust, the language, as we read it, said
20 we would have to cut a check to the taxing authorities for
21 taxes that weren't past due simply because they were secured
22 claims under state statutes.

23 THE COURT: Let me see if I can separate this out.
24 I'm sensitive to the point about whether the disclosure
25 statement -- and it may be that there's a plan change that

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1 needs to be made for it if it needs -- first off, in other
2 cases I've ruled that the interest rate does not have to be
3 included because you've got property all over the country,
4 there are different tax statute -- you know, different tax
5 rates, different interest rates that apply. So identifying the
6 applicable interest rate for specific properties is not
7 required in a disclosure statement. But I am sensitive to the
8 fact that you're dealing with priority tax claims, but this
9 could be a secured tax claim which doesn't fit within 503. And
10 I think --

11 MR. MARINUZZI: Okay, Your Honor, but I don't see
12 anything in the plan that doesn't maintain whatever rights the
13 taxing authority has under 506 to assert their claim and any
14 other charges that 506 allows them to claim.

15 THE COURT: So where is the section in the disclosure
16 statement that deals with secured tax claims?

17 MR. MARINUZZI: Your Honor, in the disclosure
18 statement on page 123, we've added a sentence that says, "To
19 the extent a holder of an allowed priority tax claim holds a
20 valid lien", which we've defined as a tax lien, "for
21 outstanding and unpaid real property taxes against property of
22 the debtors or the liquidating trust, as applicable, any liens
23 imposed on account of such claim shall remain unimpaired until
24 such allowed priority tax claim is paid in full." The idea was
25 we don't want to affect their lien --

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1 THE COURT: Do you have a section of the disclosure
2 statement or the plan --

3 MR. MARINUZZI: Yeah, it's in the --

4 THE COURT: -- that deals with secured --

5 MR. MARINUZZI: I'm reading from -- I'm sorry.

6 THE COURT: -- that deals with secured tax claims.

7 MR. MARINUZZI: Not a specific section that deals with
8 secured tax claims, unless Mr. Goren found something.

9 Okay. So what I'm told is the definition of "priority
10 tax claim" under the plan itself is broad enough to encompass
11 the tax claim that we're discussing.

12 MS. ROMERO: Your Honor, and that is just not specific
13 enough for us, because it just says "priority tax claim" files
14 under 507(a)(8) or 502(i); it doesn't mention 506.

15 And in addition to what I've previously said, there's
16 also no treatment for the tax claims under administrative
17 claims. And I proffered them language with respect that
18 usually in big plans I have seen where they have added
19 language, so I offered some language that said that for the
20 administrative tax claims, which I find on 118 of the
21 blackline, is -- well, we just included a phrase that said this
22 also includes secured tax claims, because it doesn't -- again,
23 it's not specific; it just says any and all tax claims that
24 aren't professional fees.

25 And then they give a different way to pay them, three

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1 different ways to pay them. But none of the language in the
2 administrative tax claims says that the ongoing taxes, which
3 would be for the 2000 -- at this point, we're only dealing with
4 the 2013-2014 year, which lien attached on January 1, will be
5 paid in the normal and ordinary course of business, you know,
6 timely.

7 And I'm not looking for a specific interest rate, Your
8 Honor, but I am asking that they at least refer to 511 of the
9 Bankruptcy Code, which was added in the reformat. And they did
10 do some of that language in the priority tax claims, but again,
11 my whole objection has to do with there's not a specific
12 section that deals with secured claims or secured tax claims,
13 and the fact that the section that does deal with other secured
14 claims doesn't even reference any payment or any type of
15 language for a specific claim.

16 THE COURT: I'm looking for something else, Mr.
17 Marinuzzi. Bear with me.

18 MR. MARINUZZI: Of course.

19 MS. ROMERO: Oh, and one more thing, Your Honor, the
20 tax claim --

21 THE COURT: Can you just stop for a second? I'm
22 looking for something.

23 MS. ROMERO: I'm sorry.

24 THE COURT: Stop.

25 MS. ROMERO: I'm sorry, Your Honor.

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1 (Pause)

2 MS. ROMERO: Hello?

3 THE COURT: Yes, I'm still looking for something. If
4 you're going to be on the phone, you'll wait until I talk to
5 you, okay?

6 MS. ROMERO: Oh, Your Honor, I'm sorry. I didn't know
7 I was talking to the Court.

8 (Pause)

9 THE COURT: Mr. Marinuzzi, where is the definition of
10 allowed priority tax claims?

11 MR. MARINUZZI: It's not -- it's the --

12 THE COURT: It's in the --

13 MR. MARINUZZI: -- paragraph -- I'm sorry, page 24,
14 paragraph 212 defines priority tax claim, and it says -- I'm
15 looking at the blackline. It's page 30 of 121, if you're
16 reading at the top.

17 THE COURT: Hold on. Are you looking at the plan or
18 the disclosure statement?

19 MR. MARINUZZI: I'm looking at the plan. It's the
20 defined --

21 THE COURT: Hold on.

22 MR. MARINUZZI: -- "priority tax claim".

23 THE COURT: Let me find it in the plan. That
24 definition, I'm looking at paragraph 212 on page 30 of 121,
25 priority tax claim; it doesn't include 506 claims.

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1 MR. MARINUZZI: It will now, Your Honor. We'll add
2 506 --

3 THE COURT: Well --

4 MR. MARINUZZI: -- (a) or (b). We'll address it. We
5 don't have a problem adding that.

6 THE COURT: I think what we're doing is we're mixing
7 admin and secured claims. And the language that was proposed
8 yesterday, for example, was with respect to secured real
9 property tax claims included in this section, "It shall be
10 made in the ordinary course of business with all applicable
11 costs, fees, charges, and interest in accordance with 506(b)
12 and 511."

13 MR. MARINUZZI: We're happy to provide, as part of the
14 priority tax claim definition, 506(a) and (b), which really
15 deals with secured tax claims, if that satisfies the taxing
16 authority. As far as the definition of "other secured claims",
17 it's broad enough, and it's broad enough to encompass secured
18 tax claims.

19 And the paragraph that the taxing authority would have
20 us include, what it effectively does is it says, here's how you
21 pay secured claims, and then there are secured tax claims, and
22 you're going to pay them the same exact way, because the
23 treatment that they're describing is in fact the treatment that
24 is applicable to other secured claims. So I'm not sure we're
25 adding anything by -- you know, other than comforting the

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1 taxing authority, by specifying that this treatment also
2 applies to secured tax claims.

3 THE COURT: Are they impaired?

4 MR. MARINUZZI: No, not -- on their secured claim, no.
5 They're going to get paid in full on their administrative
6 claim.

7 THE COURT: On the effective date, they're going to be
8 paid in full?

9 MR. MARINUZZI: On, or as soon as reasonably practical
10 thereafter, they'll get paid in full.

11 Now, on the secured claim, Your Honor, and this is the
12 issue that I raised earlier, the language that the taxing
13 authority was proposing says that if the real property is
14 subject to liquidation, then the claim "shall be paid in full,
15 including all applicable costs, fees, charges", et cetera,
16 under 506(b) and 511. That's fine, but if we own a property
17 that's subject to foreclosure, we own the property Ocwen is
18 foreclosing, what does that mean? Does that mean that on the
19 effective date, even though nothing's happened, we have to pay
20 the claim?

21 So rather than add more language that we thought was
22 just going to potentially lead us into problems that nobody is
23 envisioning, we thought the treatment -- and we'll add this
24 506(a) and (b) in the definition of priority tax claim --

25 THE COURT: Okay.

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1 MR. MARINUZZI: -- gave the taxing authority --

2 THE COURT: All right. I've heard enough.

3 MR. MARINUZZI: -- the comfort they needed.

4 THE COURT: With the change that the co-proponents
5 have agreed to make, the objection is overruled.

6 MR. MARINUZZI: Thank you, Your Honor.

7 MS. ROMERO: Your Honor, may I make one more comment?

8 THE COURT: No, I have ruled. Once I rule, I don't
9 listen to any further argument.

10 Go ahead, Mr. Marinuzzi.

11 MR. MARINUZZI: Your Honor, the next objection --

12 MS. ROMERO: Your Honor, may I be excused and may I
13 get the --

14 THE COURT: Absolutely.

15 MS. ROMERO: -- changes for the language?

16 THE COURT: You can be excused. Thank you.

17 MS. ROMERO: And may I get the changes for the
18 language?

19 THE COURT: We'll send you an e-mail that tells you
20 what we've changed.

21 MS. ROMERO: Okay. Thank you.

22 THE COURT: Thank you.

23 MR. MARINUZZI: Your Honor, the next objection is the
24 objection filed by Sidney and Yvonne Lewis. Our position on
25 this is that it's not really a disclosure statement objection.

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1 THE COURT: All right. Are either of the Lewises
2 present in court or on the telephone?

3 Objection is overruled.

4 MR. MARINUZZI: Your Honor, the next objection is
5 filed by the NCUAB -- I'm sorry -- yes, the National Credit
6 Union Administration Board, that objection's been resolved.

7 THE COURT: Let me just -- give me one second, okay?
8 I need to make a note here. All right. Let me just read my
9 notes with respect to -- all right, that's satisfactory.

10 MR. MARINUZZI: Their objection is resolved?

11 THE COURT: Yeah, I see that.

12 MR. MARINUZZI: Okay.

13 THE COURT: You resolved it with them, but I still
14 looked at it, so when I -- you'll go through them, I know
15 you've resolved most of them, and I don't know that I have
16 questions, but --

17 MR. MARINUZZI: Your Honor, I'm happy to go into --

18 THE COURT: Okay. Go ahead, Mr. Marinuzzi.

19 MR. MARINUZZI: -- as much detail or as little
20 detail --

21 THE COURT: Go ahead.

22 MR. MARINUZZI: So the NCUAB --

23 THE COURT: I don't want to prolong this. Let's go.

24 MR. MARINUZZI: Okay. So can I go on to the next
25 objection?

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1 THE COURT: Yes.

2 MR. MARINUZZI: Okay. The next objection was filed by
3 Freddie Mac. That's also been resolved.

4 THE COURT: Does anybody from Freddie Mac want to be
5 heard? Mr. Carney?

6 MR. CARNEY: Yes, Your Honor.

7 THE COURT: Come on up to the microphone so we get a
8 clear record.

9 MR. CARNEY: Michael Carney from McKool Smith for
10 Freddie Mac.

11 Our objection to the disclosure statement has been
12 resolved, and we obviously reserve all of our rights to object
13 to the plan.

14 THE COURT: All right. That's satisfactory, Mr.
15 Marinuzzi.

16 MR. MARINUZZI: Your Honor, the next objection is an
17 objection filed by Impac Funding Corporation and Impac Mortgage
18 Holding, Inc. We were unable to resolve this objection. Our
19 position on this is that, one, it's moot, because we filed on
20 Monday, and it's docket number --

21 THE COURT: You filed a motion to assume --

22 MR. MARINUZZI: To assume -- right.

23 THE COURT: -- the contract. Let me hear from counsel
24 for Impac.

25 MR. KAUFMAN: Good morning, Your Honor. Alan Kaufman,

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1 McKenna Long & Aldridge, on behalf of Impac.

2 We don't believe that the motion moots the objection
3 because, essentially, as long as debtors have the right to make
4 a decision about whether to assign and assume after the
5 confirmation date, we believe that it's contrary to the Code
6 and well established Supreme Court and Second Circuit
7 precedent. And in --

8 THE COURT: Have you noticed the motion, Mr.
9 Marinuzzi? Have you set a hearing date?

10 MR. MARINUZZI: It's noticed for September 11th, Your
11 Honor.

12 THE COURT: Okay.

13 MR. KAUFMAN: Yes, Your Honor. But even in the motion
14 itself, they specifically say -- and I'm happy to quote, if you
15 like, Your Honor, but they specifically say they reserve the
16 right to reject the contract afterwards, if they don't like how
17 the cure proceeding comes out. And we believe that that's just
18 not permissible, because that will likely occur after the
19 confirmation date. And they have to make the decision about
20 whether to -- irrevocably make the decision of whether to --

21 THE COURT: Well, you'll be able -- they filed a
22 motion to assume. You will be able to file an objection, if
23 that's what you choose to do. If you believe the terms on
24 which they propose to assume are not permissible, as a matter
25 of law, I will hear that on your motion -- you know, on the

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1 objection to the motion to assume. So for the disclosure
2 statement purposes, the objection's overruled.

3 MR. KAUFMAN: As long as we can reserve our rights
4 to --

5 THE COURT: You can do what you want. I mean, I --

6 MR. KAUFMAN: Thank you, Your Honor.

7 THE COURT: When I say you can do what you want, I'll
8 rule as appropriate, when it comes before me, but they've --
9 you complained that they hadn't -- they were waiting too long
10 to assume or reject. They've filed the motion, it's scheduled
11 for a hearing; you'll have an opportunity to file an
12 opposition. Try and first work it out with them, but I'll hear
13 it when the motion comes on.

14 MR. KAUFMAN: Happy to, Your Honor. I don't --

15 THE COURT: Okay. Next matter.

16 MR. MARINUZZI: Your Honor, the next objection was
17 filed by the PBGC. That's been resolved.

18 THE COURT: All right. Anybody from PBGC want to be
19 heard?

20 MR. MURRELL: Good morning, Your Honor. Vicente
21 Matias Murrell on behalf of the Pension Benefit Guaranty
22 Corporation.

23 Your Honor, the objection PBGC filed is resolved, and
24 debtors said the language will be in the disclosure statement
25 and we expect it to be in the confirmation order as well.

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1 Thank you, Your Honor.

2 THE COURT: Thank you very much. All right, that's
3 satisfactory, Mr. Marinuzzi. Go on.

4 MR. MARINUZZI: Thank you, Your Honor. The next
5 objection was filed by the FHFA, and I'm happy to report that
6 the disclosure statement objection has been resolved.

7 THE COURT: All right. Anybody from FHFA wish to be
8 heard?

9 Okay.

10 MR. MARINUZZI: Your Honor, that brings us to --

11 THE COURT: Well, hold on. Let me --

12 MR. MARINUZZI: I'm sorry.

13 THE COURT: Let me just see. I raised my questions
14 earlier with respect to FHFA. I expect there's going to be a
15 confirmation issue. I raised one question about best
16 interests. Let me stop there. It's satisfactory for the
17 disclosure statement.

18 MR. MARINUZZI: Thank you, Your Honor. That brings us
19 to Paul Papas. We don't believe this is an objection to the
20 disclosure statement.

21 THE COURT: Is Mr. Papas present in court or on the
22 telephone?

23 Overruled.

24 MR. MARINUZZI: Your Honor, the next objection was
25 filed by RESPA plaintiffs. We believe that's been resolved.

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1 Am I correct?

2 THE COURT: Still showing as unresolved on my chart,
3 but --

4 MR. MARINUZZI: Sorry.

5 THE COURT: Mr. Etkin?

6 MR. ETKIN: Yes, Your Honor, good morning. Michael
7 Etkin, Lowenstein Sandler.

8 The disclosure objection has been resolved through the
9 additional disclosure.

10 I would note that we would probably like a little more
11 time than ten days prior to the voting deadline to receive the
12 borrower claimant's trust agreement, considering its
13 significance in the case, but I'll leave that to Your Honor.

14 THE COURT: Mr. Marinuzzi? I'm not sure what that
15 means, Mr. Etkin, but --

16 MR. ETKIN: Oh --

17 THE COURT: No, I understand what it means, but I --

18 MR. ETKIN: Oh, I understand. I understand your
19 point, Your Honor. I want to just make the point, Your Honor,
20 but I don't want to hold up the hearing --

21 THE COURT: Okay.

22 MR. ETKIN: -- with respect to that issue.

23 THE COURT: All right.

24 MR. ETKIN: That's all.

25 THE COURT: Mr. Marinuzzi?

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1 MR. MARINUZZI: Your Honor, we will, collectively, do
2 whatever we can to get copies of the draft --

3 THE COURT: Mr. Etkin, before you go away, has Judge
4 Baer set a hearing?

5 MR. ETKIN: Your Honor, we have a final hearing on
6 October 7th. A preliminary approval order has been entered.

7 THE COURT: That I saw.

8 MR. ETKIN: Right.

9 THE COURT: I saw that. So October 7th is the final
10 hearing?

11 MR. ETKIN: October 7th.

12 THE COURT: Thank you very much, Mr. Etkin.

13 MR. ETKIN: Thank you, Your Honor.

14 MR. MARINUZZI: Your Honor, we'll do what we can to
15 share drafts of the documents with Mr. Etkin.

16 THE COURT: Okay.

17 MR. MARINUZZI: We want to make him comfortable before
18 we file them.

19 THE COURT: That's fine.

20 MR. MARINUZZI: That brings us, Your Honor, to the ad
21 hoc group of junior secured noteholders, and we've been able to
22 resolve all of the objections except with respect to one point,
23 and that point we tried to address by providing additional
24 disclosures. What happens if Your Honor rules that they're
25 entitled to post-petition interests? How does it blow up or

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1 not blow up the plan?

2 And so the point we tried to make in the disclosure
3 statement, the point Mr. Eckstein made for the Court earlier,
4 is what we've done in the plan and what we've sought to clarify
5 in the plan is Your Honor could find they're entitled to post-
6 petition interests, that the value of their collateral -- they
7 have certain items that are part of their collateral that the
8 committee considers not to be part of their collateral -- and
9 Your Honor could find that there's a diminution in value of
10 their aggregate collateral position caused by, for example, the
11 intercompany settlement, which is what they're focused on. To
12 the extent Your Honor does find so, that does not blow up the
13 plan. And we tried to clarify, as best as we could, but I
14 understand it's not to the satisfaction of the JSNs, so --

15 THE COURT: I see Mr. Uzzi there, so let me hear from
16 him.

17 MR. MARINUZZI: Okay.

18 MR. UZZI: Good morning, Your Honor. Gerard Uzzi of
19 Milbank Tweed Hadley & McCloy on behalf of --

20 THE COURT: Just pull the microphone a little closer.

21 MR. UZZI: Oh, sorry. Gerard Uzzi of Milbank Tweed
22 Hadley & McCloy on behalf of ad hoc group.

23 Your Honor, I can, I think, get through this fairly
24 briefly. But before, Your Honor, I just think it's worth
25 mentioning, giving an update on the mediation. It was set to

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1 expire, if you remember, last Friday. Through an agreement of
2 the parties we've extended it at least through August 30th. So
3 we're at least continuing to talk, Your Honor.

4 We are resolved, but some of the resolutions, we've
5 agreed, require a little bit of a discussion on the record,
6 Your Honor --

7 THE COURT: Go ahead.

8 MR. UZZI: -- with respect to the resolution. As an
9 initial matter, Your Honor, I trust you've read our objections,
10 so I'll --

11 THE COURT: I have.

12 MR. UZZI: Okay. I note that in there we've provided
13 some comprehensive riders as proposed additional disclosures.
14 While the debtors did not accept our riders, they did include
15 some disclosures, which we appreciate. But they didn't go all
16 the way, so to speak, with respect to our disclosures.
17 Nonetheless, except with respect to the one issue relating to
18 what happens if the JSN's entitlement to post-petition interest
19 is decided on a ground that is inconsistent with the global
20 settlement --

21 THE COURT: Can I ask you -- before you go on, are the
22 JSNs seeking default interest or --

23 MR. UZZI: We are seeking --

24 THE COURT: -- contract rate?

25 MR. UZZI: -- everything we're entitled to under the

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1 contract, which would include default interest and fees, Your
2 Honor.

3 THE COURT: Yeah, I think, Mr. Marinuzzi, none of
4 what -- I didn't see anything in the disclosure statement that
5 made that point clear, that they're seeking default interest.
6 I thought that was the case. Maybe I missed it.

7 MR. MARINUZZI: Your Honor, I recall it being in
8 there. I can't point to the specific provision in the
9 disclosure statement, but there is a discussion --

10 THE COURT: Okay.

11 MR. MARINUZZI: -- about what they're asking for.

12 THE COURT: As long as it's there.

13 I'm sorry, I didn't mean to -- it was something I --
14 go ahead, Mr. Uzzi.

15 MR. UZZI: It's quite all right, Your Honor. There's
16 the plan confirmability issue, which Your Honor touched on a
17 little bit, and I'm not sure with respect to our issues, but I
18 think it's related. I'll address that separately. With
19 respect to all the other disclosure issues, we're prepared not
20 to press them, provided that --

21 THE COURT: But I did think it was interesting you
22 were complaining about the AFI 2.1 billion dollar contribution
23 and how it was arrived, how it would be allocated, but you
24 signed up for a pre-petition plan support agreement that had a
25 750 million dollar contribution. So I thought you were -- it

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1 was somewhat ironic that the JSNs were raising issues about the
2 2.1 billion dollar. You didn't seem to be the party with the
3 most persuasive voice on the issue of the AFI contribution.
4 Let me just put it that way.

5 MR. UZZI: Well, fair enough, Your Honor. I mean, I
6 think that it's important to recognize that with respect to the
7 pre-petition agreement, it was signed by a minority of junior
8 secured noteholders. The junior secured noteholders --

9 THE COURT: We don't need to review that.

10 MR. UZZI: All right, Your Honor.

11 THE COURT: It was just something that when I read
12 your objections, and I thought back over the life of this
13 case -- but just, let's argue what we have before us.

14 MR. UZZI: That's fair, Your Honor. I mean, I do
15 think it's worth mentioning, although there's been this mantra
16 that they've improved our treatment, relative to the first PSA,
17 we take issue with it. I'm not going to take Your Honor's
18 time, but I just want to make sure we take -- I do say we take
19 issue with that characterization.

20 And related to that, Your Honor, we're not going to
21 press our disclosure objections, but provided that, and with
22 the understanding that our failure to press our objections now
23 is not used against us in the ongoing and future litigation.
24 We have that agreement with the plan proponents with respect to
25 that understanding.

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1 Your Honor, with respect to the riders that we
2 submitted, even though we have not pressed our objection, to
3 the extent the Court hasn't reviewed them, I'd invite the Court
4 to do so.

5 THE COURT: I read your papers.

6 MR. UZZI: All right. Okay, Your Honor.

7 And so let me return to what I refer to as the
8 confirmability issue, Your Honor. And just I think that -- let
9 me say, I think this is resolved, actually. And the statements
10 by Mr. Eckstein on the record earlier today, I think, hopefully
11 puts this to bed with respect to us.

12 With respect to your comments earlier, Your Honor --
13 I'm sorry. With respect to -- you were asking about the
14 confirmation order -- oh, here it is. I suspect what you were
15 looking at is Article 10 of the plan; that's the conditions to
16 confirmation.

17 And for instance, 10(A)(c) is, "The confirmation order
18 shall be reasonably acceptable to the plan proponents, Ally,
19 and each of the consenting claimants." The fact that it's
20 "reasonably", I guess, is comforting, to some extent, but
21 that's really Your Honor's issue.

22 There's another provision, "No plan modifications have
23 altered distributions to be made under the plan shall have
24 occurred without the consent of the plan proponents, Ally, and
25 each of the consenting claimants." That has no materiality

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1 qualifier in it, so it goes up further than, I think, what the
2 Code would allow the plan proponents to do.

3 And the last one is G, Court approval of the third-
4 party releases, the debtor releases, and exculpation provisions
5 in the plan without any modification thereto. So I think
6 that's probably what Your -- where Your Honor maybe got
7 concerned.

8 THE COURT: Thank you, Mr. Uzzi.

9 MR. UZZI: Now, Your Honor, with respect to us, as
10 Your Honor is probably painfully aware, I've been struggling
11 with this issue for months now.

12 THE COURT: I agree with most of what you just said.

13 MR. UZZI: Okay, Your Honor.

14 THE COURT: The painful part.

15 MR. UZZI: It's been painful for me, too, Your Honor,
16 to the extent that counts for anything. Maybe I have not done
17 a good job in articulating this in the past, but the reason why
18 I think this is important to us and should be important to
19 everybody is that we need to know exactly what we're
20 litigating. And it's our hope -- and maybe we don't get
21 there -- but it's our hope when we know exactly what we're
22 litigating maybe we can narrow the litigation a little bit.

23 THE COURT: That's why I had for Phase I trial, had
24 the parties agree on a statement of the issues for the trial,
25 and we're going to do the same thing with respect to the issues

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1 that affect the JSNs, with respect to Phase II assuming it's
2 done confirmation or separately. I wanted the clarity of what
3 I was being asked to decide. So you've agreed with respect to
4 the Phase I trial at this point, and remains to be done with
5 respect further on.

6 The one -- and I don't know whether this is something
7 that should have been clear to me before or not, when I read
8 the proposed additions to the disclosure statement -- and maybe
9 this is just an alternative argument, I don't know -- but what
10 it, maybe for the first time, drove home to me was, it had
11 seemed to me that your -- unless you were found to be
12 oversecured in Phase I, if it got to Phase II, confirmation,
13 and the issue became the global settlement of the intercompany
14 claims valuing them at zero, that I had to reject that
15 settlement to reach your argument whether you were oversecured
16 based on those. But what the additional language drove home,
17 maybe it's just as an alternative argument, but your argument
18 is that if the settlement of the intercompany claims valuing it
19 zero is approved, your argument is that you're entitled to
20 adequate protection because of the diminution -- by the
21 diminution in value, you say that you have an interest in those
22 intercompany claims. That maybe -- maybe that should have been
23 obvious to me before, but it wasn't. But when I read the
24 additional language, that was sort of driven -- that was the
25 first time I had focused on that argument.

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1 MR. UZZI: Well, Your Honor, that is part of it. I
2 would say even with the initial -- it has never been our
3 position that you need to reject the global settlement to
4 determine that we're oversecured. And even with respect to the
5 intercompany claims, it has been our position, which until now,
6 and maybe even now may still be rejected by the plan
7 proponents, that if you determine that there were value -- I
8 want to do it kind of, let's say conceptually --

9 THE COURT: Um-hum.

10 MR. UZZI: -- rather than getting caught in the
11 legalese because that's the problem. I'm concerned about a
12 constant footfall in front of me. If you determine that there
13 were value in the intercompany claims, and that's what made us
14 oversecured, we would be entitled to the post-petition
15 interest, and the plan would still be confirmable. We have
16 never gotten that representation from the plan proponents and
17 we still don't have that representation from the plan
18 proponents. We've ---

19 THE COURT: Well, I understand, because they say that
20 you have no property interests, collateral interests in the
21 intercompany claim per se. And I think either you or Mr. Shore
22 acknowledged that. You don't have any pledge of intercompany
23 debt, for example.

24 MR. UZZI: No, Your Honor, we have a security interest
25 through a security agreement that gives us the intercompany

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1 claims. There's no note that has pledged us, a physical note.
2 But we have a security interest in -- either directly in
3 material intercompany claims or -- to be clear, we don't have a
4 security interest in every intercompany claim, but in certain
5 intercompany claims we do, and others we have a pledge of the
6 equity of the debtors that --

7 THE COURT: That's what I understood you had. You had
8 a pledge of the equity. But maybe we should do this --

9 MR. UZZI: We have both.

10 THE COURT: Let's save this --

11 MR. UZZI: Oh, okay, Your Honor.

12 THE COURT: -- discussion --

13 MR. UZZI: But --

14 THE COURT: -- for when we talk some more about the
15 UMB case, but we'll focus now on the disclosure statement
16 issues.

17 MR. UZZI: What we have struggled with, Your Honor, is
18 that why should it matter if you don't otherwise upset the
19 plan? And for instance, if the Phase I trial, you were to
20 determine we're oversecured, and it moots everything else
21 out -- you were to determine we're oversecured because there's
22 even more value in the going concern than what we're saying,
23 the plan is confirmable, everybody gets what they get. If you
24 were to determine we're oversecured, we don't get there in
25 Phase I, but you would determine because the intercompany

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1 claims had value, and you gave us that value, through whatever
2 mechanism you gave us that value, I don't --

3 THE COURT: You just want your money.

4 MR. UZZI: I just want my money and I don't believe
5 that they should be able to then pull the plan or suggest it
6 Your Honor, sorry, exactly what you were saying early on, the
7 plan's not confirmable.

8 THE COURT: I don't think they said that -- at least
9 what I've underst -- the approval of the global settlement,
10 including valuing of intercompany claims at zero is an integral
11 part of the plan. I've understood that since I approved the
12 PSA. Nothing -- they've never altered anything they've said
13 about that. But it may be, just hypothetically, that you get
14 your money and they get the global settlement approved if, for
15 example, you get the benefit of the value that was there but
16 they've settled it at zero, so the global settlement gets
17 approved and you wind up oversecured.

18 MR. UZZI: Your Honor, I've been asking for that --

19 THE COURT: Wishful thinking, I'm --

20 MR. UZZI: I've been asking for that for months.

21 THE COURT: Well --

22 MR. UZZI: And so -- but I think --

23 THE COURT: But I'm the one who's got to be decide it.

24 I mean, you can ask them. They can say no, they can say yes,
25 they can say we're not going to answer your question, but

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1 ultimately that's an issue I'm going to have to decide.

2 MR. UZZI: I'm not -- hopefully Your Honor will rule
3 in our favor. I'm not asking Your Honor today to rule in our
4 favor. I'm just trying to figure out what we're fighting
5 about, and more importantly --

6 THE COURT: Well, put it this way. I saw what you
7 proposed.

8 MR. UZZI: Yeah.

9 THE COURT: They didn't accept the language. They
10 didn't accept -- they drafted some other language. My reaction
11 is for disclosure statement purposes, this language is adequate
12 disclosure. The world is on notice, Mr. Uzzi. You only have
13 to come into this court two or three days a week to find out
14 all the issues that you're fighting about. Nobody -- I mean,
15 there's plenty of language in the disclosure statement, and
16 just show up in this courtroom again tomorrow and everybody
17 will know what you're fighting about.

18 MR. UZZI: And with respect to the disclosure over the
19 disputes I agree completely. The reason why I felt the need to
20 have this further discussion with Your Honor is be -- is really
21 just for one reason. And if you were to look at the disclosure
22 language that we proposed and compared it the disclosure
23 language that they proposed, and I have a blackline if it would
24 help --

25 THE COURT: I don't --

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1 MR. UZZI: I can do it without it. We had said the
2 plan -- the proposed language was the plan provides that if the
3 bankruptcy court ultimately determines "for any reason that
4 we're oversecured" and then it goes on. They struck the words
5 "for any reason". We also gave a non --

6 THE COURT: How does it change the substance though?
7 I mean, if I decide you're oversecured, you're oversecured.

8 MR. UZZI: Well, Your Honor, I'm bound by the
9 mediation order. I know what they have said. There's a reason
10 why I'm up here making this point. But I think I can get
11 there, Your Honor, just -- I read -- I'm not comforted by their
12 disclosure statement language. However, I'm comforted by this
13 colloquy and I'm comforted by the statements of Mr. Eckstein on
14 the record earlier today. But most importantly, I'm actually
15 comforted by their reply brief. And I won't read the specific
16 language into record in there, but I think they now in their
17 reply brief, at least, have said if we are oversecured for any
18 reason -- if Your Honor determines we are oversecured for any
19 reason, the plan is still going to be confirmable. And based
20 upon their reply brief I don't need --

21 THE COURT: I read that in the omnibus reply as well.
22 I saw that. I never -- maybe I was in the dark here, but I
23 never thought their position was to the contrary. I raised
24 this point very early on at the time of the PSA approval, I
25 raised it with Mr. Eckstein, I believe. I didn't want to get

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1 in the position of approving a PSA that provided for plan
2 treatment for you pre-petition and principal but no post-
3 petition interest. I raised this point very expressly, there's
4 got to be a transcript of it. I didn't want to find that if we
5 get to the end of the day and you litigate this -- and the
6 issue is not resolved by settlement, we get to the end of the
7 day and I determine that you are oversecured and entitled to
8 post-petition interest, I didn't want to suddenly find that
9 this whole thing is blown up, I've gone through this empty
10 exercise. Mr. Eckstein very clearly told me that I was -- that
11 that was correct and it's been clarified several times. Mr.
12 Marinuzzi, I don't know, Mr. Lee, who is not here today, but
13 that's a point that's been clarified quite often. We'll get to
14 the end of the day; if you don't settle it, I will decide it.
15 And if you're oversecured, they've said quite clearly, you'll
16 get your whatever you're entitled to. Mr. Marinuzzi, you
17 disagree with that?

18 MR. MARINUZZI: Your Honor, we don't disagree and
19 we've provided two scenarios: they're either oversecured or
20 they've got an adequate protection --

21 THE COURT: Well, I don't need more than that. Do you
22 disagree, Mr. Eckstein?

23 MR. ECKSTEIN: Your Honor, I think I have said
24 multiple times --

25 THE COURT: Multiple times.

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1 MR. ECKSTEIN: -- we do not disagree --

2 THE COURT: Yeah, okay.

3 MR. ECKSTEIN: -- and we've tried articulate --

4 THE COURT: Okay.

5 MR. ECKSTEIN: -- frankly, with a lot of precision --

6 THE COURT: Yeah.

7 MR. ECKSTEIN: -- the different --

8 THE COURT: Okay.

9 MR. ECKSTEIN: -- mechanisms --

10 THE COURT: Enough.

11 MR. ECKSTEIN: -- or scenarios and I think we keep

12 clarifying --

13 THE COURT: Okay. I --

14 MR. ECKSTEIN: -- the mech -- but the fundamental
15 question Your Honor has raised early on stands.

16 THE COURT: Yeah, okay.

17 MR. ECKSTEIN: If the Court ultimately determines that
18 they're entitled to they're post-petition interest the plan
19 provides, they will get it.

20 THE COURT: Okay. So you've heard once again, Mr.
21 Uzzi, from the coproponents that if you're entitled to it,
22 you'll get it.

23 MR. UZZI: Your Honor --

24 THE COURT: The issue I have -- I guess I've got to
25 put a stop to this -- under 1125, does the disclosure statement

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1 as proposed with the amendments they made, is it adequate
2 information.

3 MR. UZZI: Your Honor, we have no further objection
4 from our standpoint, but we defer to the Court.

5 THE COURT: Let me just -- so the record clear.
6 You're withdrawing your objections to the disclosure statement
7 as amended. There was other language you wanted; you didn't
8 get it. But do I understand correctly, you're just withdrawing
9 your objection -- you're reserving all of your rights --

10 MR. UZZI: Yes.

11 THE COURT: -- but you're just -- you're withdrawing
12 your objection to the disclosure statement.

13 MR. UZZI: With the proviso that I read that the
14 withdrawal can't be used against us later. Yes, Your Honor.

15 THE COURT: I'm not going to hold it against you.

16 MR. UZZI: No, I know, Your Honor, and I apologize, to
17 the extent the --

18 THE COURT: Don't apologize. Okay.

19 MR. UZZI: And --

20 THE COURT: The objection's been withdrawn, Mr.
21 Marinuzzi. Let's -- Mr. Uzzi?

22 MR. UZZI: I just wanted to thank Your Honor for
23 indulging me in getting through this. This has been an
24 important issue for us.

25 THE COURT: All right, thank you.

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1 MR. MARINUZZI: Your Honor, that brings us to the
2 objection filed by Amherst Advisory Management, which I
3 understand's been resolved.

4 THE COURT: Right, that's satisfactory. Go ahead.

5 MR. WEISSER: Your Honor --

6 THE COURT: Yup, go ahead.

7 MR. WEISSER: May I speak?

8 THE COURT: Yeah. Come on up, please.

9 MR. WEISSER: Thank you very much.

10 Good morning, sir. Josh Weisser, from Gibson Dunn &
11 Crutcher on behalf of Amherst. Mr. Marinuzzi's correct, the
12 status of our objection is withdrawn. It's withdrawn. We've
13 reserved all rights to continue our objection at confirmation.

14 Obviously my client clearly has some issues regarding
15 the RMBS settlement that's incorporated into the global
16 settlement and the fact that it is mandatory in the sense that
17 their trust is bound. We maintain the position that the trust
18 should be permitted to opt out and we've taken steps to the
19 extent possible to do so. We intend to continue prosecuting
20 that. I believe -- only because I know that often people talk
21 about unfettered litigation, Mr. Eckstein brought it up, and I
22 know that that's a concern for the case -- I would like to
23 point out, Your Honor, I believe we are the only trust, to my
24 knowledge that -- or we're the only holder, I should say -- to
25 my knowledge, that has taken steps to both opt out of the

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1 support agreement and attempt to opt out of the settlement, so
2 I don't believe that that would apply to our trust if we're
3 allowed to opt out of the settlement. And that's pretty much
4 all we have to say.

5 THE COURT: I know what the position of the
6 coproponents is and I know what your position is, and it's
7 reserved for another day.

8 MR. WEISSER: Thank you very much, sir.

9 THE COURT: All right. Mr. Marinuzzi?

10 MR. GARRITY: Good morning, Your Honor. Jim Garrity,
11 from Morgan Lewis on behalf of Deutsche Bank. We agree all of
12 that is set in reserve with regard to Amherst to another day.
13 We want to make it clear, Your Honor, that with regard to the
14 direction and the indemnity, it's our view that it does not
15 give Amherst the right to act on behalf of the trust. But
16 again, confirmation issue for a later date. Thank you very
17 much.

18 THE COURT: Thank you very much, Mr. Garrity.

19 Mr. Marinuzzi.

20 MR. MARINUZZI: Your Honor, that brings us to the
21 objection filed by UMB Bank, which has been resolved.

22 THE COURT: Anybody from UMB want to be heard? Don't
23 need to be. Okay.

24 MR. MARINUZZI: Which -- that brings us to the
25 objection filed by the U.S. Trustee's office, which has also

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1 been resolved.

2 THE COURT: So, this -- and I know it's resolved for
3 confirmation, I raised this issue earlier. The U.S. Trustee
4 raised the issue about exculpation. It's an issue; it is
5 clearly an issue. It's an issue on at least two fronts. One
6 as drafted -- as re-drafted, because originally it only covered
7 post-petition conduct. Now it's been pre-petition, as well.
8 So, it's an issue for that reason.

9 And secondly it's an issue with respect to exculpation
10 against nonestate fiduciaries, which includes the settling
11 claimants and Ally, I'm not sure does anything differently than
12 the third-party nondebtor release would do, so I'm not going to
13 dwell on it there. But -- and I will -- I do want to hear from
14 the coproponents with -- I expressed this concern earlier, I
15 don't want to go all the way down the road and find out that we
16 have full briefing of this issue, I hear it and I decide it in
17 a way that your side doesn't like, that I'm told sorry, it was
18 a condition to the plan, and no plan. That's unacceptable.

19 MR. MARINUZZI: Your Honor, that's a fair point, and
20 we're mindful of decisions. And we know this issue came up,
21 and I believe in MF Global, regarding post-petition exculpation
22 for nonestate professionals. We were talking about pre-
23 petition as well. We see it as an issue, and we recognize for
24 confirmation that, obviously, Your Honor will decide how Your
25 Honor decides, but we need to be prepared with the correct

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1 legal basis and factual record to support those exculpation
2 requests.

3 I think when you look at -- simply focus on post-
4 petition for this second, there are a lot of folks that
5 participated in getting this deal done that really made a deal
6 in good faith. Obviously it can be second-guessed ten ways
7 'til Sunday, did so without the benefit of the examiner's
8 report being public, and that turned out to be a good thing.
9 But it's very easy, especially for the number of independent
10 fiduciaries that participate in these discussions, for someone
11 who they serve in a fiduciary capacity for to say you did
12 something wrong. And under those circumstances -- and I don't
13 want to argue confirmation; I think it's perfectly appropriate
14 for all of those parties that participated in getting this deal
15 done that allowed us to get here without burning every dollar
16 that we had in litigation -- to expect that they'll be
17 exculpated for their actions.

18 THE COURT: Look, among -- there's no Second Circuit
19 binding authority on it, okay? Judge Walrath in Washington
20 Mutual 442 B.R. 314 (Bankr. D. Del. 2011). In RE: Quincy
21 Medical Center 2011 W.L. 5592907 (Bankr. D. Mass.), November
22 16th 2011. In RE: Coram Healthcare Corp. 315 B.R. 321, 337
23 (Bankr. D. Del. 2001). Somebody better come to me with
24 authority that -- look, I understand the argument why, and I'm
25 not saying it's inappropriate. People worked very hard through

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1 the mediation and the PSA and since and they don't want to turn
2 around and find themselves getting sued. I fully appreciate
3 that, but it's an issue. Okay, and I'll just come back to --
4 put it this way: I'm not signing an order approving the
5 disclosure statement until I hear from the coproponents that
6 the confirmation order or any subsequent decision of the Court
7 will control the resolution of this decision. I just -- I
8 don't want to go through several months of hell to find out
9 that because if I -- and I don't how I'm going to conclude. I
10 just -- I know I've read these cases, okay? But if I decide
11 against you on it, I don't want it, I don't want people pulling
12 the plug. Tell me now, you know?

13 Mr. Eckstein?

14 MR. ECKSTEIN: Your Honor, if I may? Maybe this is an
15 appropriate time to address the issue. If I may first, I think
16 it's important to distinguish between an observation I
17 understood Your Honor made at the outset, which was a concern
18 with the general breadth of the confirmation order provision in
19 the plan and then let's deal with exculpation.

20 I think in terms of the confirmation order, Article 10
21 and Article 11 are drafted in a way that I believe is something
22 that Your Honor is generally familiar with and finds
23 acceptable, which is that the confirmation order shall be
24 reasonably acceptable to the plan proponents and each of the
25 consenting claimants. It does not provide an absolute standard

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1 of acceptability. So it has a reasonableness provision.
2 There's also the ability in Article 10 of the plan to make
3 modifications to the plan, and again they have to be reasonably
4 acceptable and it provides that it not -- that the consent of
5 the consenting claimants is required to the extent it directly
6 effects them, but again, it does not have an absolute standard
7 in there as a general matter.

8 That is qualified, however, and I think Your Honor has
9 picked this up, by the release in the exculpation provision. I
10 think Your Honor has squarely focused on one of the provisions
11 where the least -- the plan support agreement contemplate that
12 notwithstanding the right to make modifications, there will not
13 be modifications to the release or the exculpation provisions.

14 So Your Honor is correct that in the event Your Honor
15 were to reject the exculpation provision with the way the plan
16 documents are drafted, that would, essentially, be inconsistent
17 with the plan documents.

18 So we had contemplated that the issue would be
19 briefed -- and I do want to also point out, and again I am
20 familiar with Coram; I am familiar with WaMu, specifically. I
21 was involved in both of those cases, and I know exactly what
22 occurred in each of those cases before Judge Walrath.

23 THE COURT: Well, the Fifth Circuit and Pacific
24 Lumber, I mean --

25 MR. ECKSTEIN: Correct. And again, it's a little bit

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1 early, although maybe for all of our sakes we shouldn't sort of
2 sweep it under the rug. The exculpation provision, Your Honor,
3 it's important to note, was drafted and provides that there's a
4 carve-out of gross negligence and willful misconduct --

5 THE COURT: But that's absolutely required. That's
6 not an issue.

7 MR. ECKSTEIN: And so I just wanted to make the point,
8 Your Honor, that's in there.

9 THE COURT: I know, I know it is.

10 MR. ECKSTEIN: So it then leaves the question of, with
11 the carve-out of gross negligence and willful misconduct, is
12 the exculpation provision including for pre-petition conduct of
13 nonestate fiduciaries appropriate in the context of this case.

14 THE COURT: Okay. Let me ask you this: do you want
15 me deciding that now without a record because it potentially
16 makes the plan unconfirmable, or do you want to get to
17 confirmation and have a full record and have the Court decide
18 in that context? I'm just -- I'm not saying that the result
19 would be different, but all I'm saying is, I'm not -- I don't
20 want -- I don't mean to put ultimatums but I'm going to. I did
21 this in MF Global; I'm doing the same thing here. Okay. I'm
22 not going to go through the next few months only to be told
23 that if I don't approve the exculpation clause there's no plan,
24 okay? So if you need to go back to the consenting claimants,
25 and confer -- the consenting claimants and Ally and the debtors

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1 to confirm to the Court that this issue will be left for the
2 decision by the Court at or about the time of confirmation, I'm
3 not going forward. Let me make it crystal clear.

4 MR. ECKSTEIN: And Your Honor, I appreciate your
5 raising it, and I think it's appropriate for the issue to be
6 raised. I think as Your Honor can anticipate, given the
7 constituency that I represent plus other constituencies that I
8 don't represent --

9 THE COURT: Your constituency gets covered; you're
10 estate fiduciary.

11 MR. ECKSTEIN: But -- no I'm -- but given the parties
12 that are sort of within the universe of the consenting
13 claimants and the other parties to the plan support agreement,
14 I can't, standing here today --

15 THE COURT: I know that.

16 MR. ECKSTEIN: -- make any representations.

17 THE COURT: I know that.

18 MR. ECKSTEIN: Notwithstanding that, I do think it's
19 important, Your Honor, our view is that in this case, we
20 believe and we hope to persuade Your Honor that the exculpation
21 provision is appropriate and consistent with applicable law.

22 THE COURT: And you may well do that.

23 MR. ECKSTEIN: That said -- that said, I certainly am
24 not --

25 THE COURT: If the cases weren't lined up against you,

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1 I wouldn't be making an issue out of this.

2 MR. ECKSTEIN: Your Honor, this is a tough case from
3 start to finish, and I don't think it's going to change. That
4 said, we'll certainly -- we're going to raise this with the
5 consenting claimants and I don't necessarily know what the
6 right answer is, but I think it's appropriate to raise it and
7 we're happy to come back to Your Honor as promptly as we can
8 with any feedback that we have. But I understand Your Honor's
9 concern that you don't want to find out that at the end of this
10 entire process, that we don't have a plan that can go forward.
11 That said, I have parties who labored mightily on how this was
12 structured, and I think it's fair for them to rely upon a
13 structure that was put into place in good faith --

14 THE COURT: Well, it may be.

15 MR. ECKSTEIN: -- by everybody.

16 THE COURT: But then again, the judge has said he
17 isn't going to approve the disclosure statement unless I find
18 out that -- look it's one of two things. I mean, if your
19 people want to stand their ground, then I will ask for
20 additional briefing now. I won't approve the disclosure
21 statement, we'll have full briefing of the issue and an
22 argument, and probably in October I'll decide whether it's at
23 least, assuming all the requirements are satisfied, exculpation
24 can extend that far. I mean, that's kind of what you're
25 facing. Okay?

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1 MR. ECKSTEIN: I understand the --

2 THE COURT: All right.

3 MR. ECKSTEIN: I understand the dynamic.

4 THE COURT: Let me -- since you're up there, let me --
5 tell me, explain to me, with -- and this really is AFI's issue,
6 but I want to understand with the third-party nondebtor
7 release, does it cover claims unrelated to the business of the
8 debtors? In other words, it seems to me, I understand the
9 argument, because I've heard it; it's come up before that AFI
10 has filed indemnification claims. And many of the -- as I
11 understand it, much of the asserted liability against AFI is
12 aiding and abetting or some derivative -- it's not -- the
13 claims are not derivative, they don't belong to the debtor,
14 these claims specifically. Does the release of AFI, if
15 approved, extend to matters that are unrelated to the business
16 of the debtors? That's one question.

17 MR. ECKSTEIN: Your Honor, I believe that we actually
18 address that specific issue --

19 THE COURT: Yeah.

20 MR. ECKSTEIN: -- in Article 9(e) of the plan, which
21 is the settlement release injunction and related provisions,
22 where the fourth line from the bottom, it says "otherwise
23 arising" --

24 THE COURT: Maybe Mr. Marinuzzi can tell me in the
25 blackline where I -- what page I'm going to --

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1 MR. MARINUZZI: Page 99.

2 THE COURT: Okay, hold on.

3 MR. ECKSTEIN: Where it says "arising from or related
4 in any way to the debtors".

5 THE COURT: Okay.

6 MR. ECKSTEIN: I believe that was intended to be
7 responsive to the issue Your Honor raised. I would defer to
8 Mr. Schrock to confirm that I'm not misstating what was
9 intended.

10 MR. SCHROCK: Good morning, Your Honor -- or good
11 afternoon. Ray Schrock with Kirkland & Ellis on behalf of AFI
12 and Ally Bank. That's correct, the release is limited. It has
13 to be, by the words, in any way related to the debtors'
14 businesses.

15 THE COURT: So let me ask. And I will confess, I
16 didn't go look at the solicitation procedures. Had -- and the
17 plan, okay? So for example, is there a provision that's being
18 put in the ballot so that anybody who votes in favor of the
19 plan consents to the releases provided in the plan?

20 MR. SCHROCK: Yes.

21 THE COURT: There is.

22 MR. SCHROCK: Yes.

23 THE COURT: Okay. Because we're going to narrow --
24 what I'm trying to understand is, are we narrowing -- the PSA
25 includes the provision, so it seems to me that anybody who

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1 signed the PSA is consenting -- assuming the plan as set forth
2 in the PSA is approved, that anybody who signed the PSA is
3 consenting to the release of Ally. Okay.

4 If the ballot includes a provision to consent, then
5 anybody who votes in favor of the plan -- I'm not deciding the
6 issue today, but I have in other cases, and so have some of my
7 colleagues, determined that if the ballot states that if you
8 vote in favor of the plan you consent to the third-party
9 releases -- that ought to be in bold -- that that's sufficient
10 for consent. So the issue is, to what extent are their
11 nonconsensual releases, okay? And that, then, puts you in the
12 Manville Metromedia analysis. Because they don't really -- if
13 it's consensual it's fine; if it's not consensual it's a bigger
14 problem. So have you taken all the steps that should be
15 properly done to narrow the range of nonconsensual releases
16 that are going to be provided?

17 Mr. Marinuzzi? Mr. Schrock? Either one of you.

18 MR. MARINUZZI: Your Honor, let me just be clear on
19 what the notices and the ballots say. So what we've done on
20 the ballots is we've effectively cut and pasted into the ballot
21 the release provisions of the plan.

22 THE COURT: Right.

23 MR. MARINUZZI: What it says is if the plan's approved
24 then the following releases shall apply. It does not say "if
25 you vote for the plan", but that's an easy -- we can add that.

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1 THE COURT: I think you ought to -- you might look, I
2 don't know -- I think the Kodak plan that got confirmed
3 yesterday, the ballot had something. It had a provision in it
4 that if you vote in -- the issue comes, and it wouldn't be the
5 first case where this has come up, is what happens if somebody
6 doesn't vote. I mean, I think the Kodak plan's ballot
7 basically says if you don't vote it's deemed to be an
8 acceptance of the -- that was confirmed yesterday by Judge
9 Gropper. You might look at that. I don't know.

10 Ms. Golden, did you argue that yesterday?

11 MS. GOLDEN: Mr. Masumoto.

12 THE COURT: Mr. Masumoto.

13 MR. MASUMOTO: Yes, Your Honor.

14 THE COURT: You didn't object to that, as I
15 understand.

16 MR. MASUMOTO: No, there was a voluntary vote on the
17 part of the -- on the ballot, either agreeing or disagreeing.

18 THE COURT: But I thought that the ballot also
19 included that if you don't vote it's deemed to be an
20 acceptance.

21 MR. MASUMOTO: Yes. I mean that is a --

22 THE COURT: And you didn't object to that, as I
23 understand it, yesterday.

24 MR. MASUMOTO: No, Your Honor. I didn't object.

25 THE COURT: You might take that to heart.

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1 MR. MARINUZZI: Your Honor, our ballots will say that.

2 Now, it leaves --

3 THE COURT: They may change their mind. I don't know.

4 MR. MASUMOTO: We will revisit that.

5 THE COURT: Word travels fast, you know.

6 MR. MARINUZZI: It still leaves open, obviously, the
7 issue of what happens to third parties that are not creditors
8 of the debtors' estate and don't even get a ballot.

9 THE COURT: Oh, I understand that. But let's, at
10 least, narrow the universe of what we're talking about.

11 MR. MARINUZZI: We'll do that. That makes complete
12 sense, and we'll do that.

13 THE COURT: And I don't know how I'm going to rule.
14 It's a difficult issue. I've said it before. AFI could decide
15 that the risk, if all they're talking about are the
16 nonconsenting creditors, maybe the risk isn't all that great.
17 I mean, that's something you have to evaluate. I'm not -- just
18 an observation.

19 But what I want to -- I think you want to be sure that
20 you have, and I don't know whether you need to tinker with the
21 plan language to put this into effect, but certainly with the
22 ballot, that when a ballot goes out people understand -- you
23 got the PSA that's got a lot of people who've signed on
24 already, but when the ballot goes out, you vote in favor of the
25 plan, you're consenting to the releases and exculpation.

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1 Again, this goes to exculpation as well. I mean, the
2 issue I'm raising is if it's not consensual, if everybody who
3 votes in favor of the plan understands that this is the
4 exculpation we're agreeing upon, that's -- I'm not ruling, but
5 that is a stronger argument.

6 MR. MARINUZZI: That's fine, Your Honor. We'll modify
7 the ballots to make sure that that point is made.

8 THE COURT: But run it by Mr. Masumoto to make sure
9 you're not -- that I haven't created an objection that you're
10 going to get.

11 MR. MASUMOTO: Thank you, Your Honor. I appreciate
12 that.

13 MR. ECKSTEIN: Your Honor, if I may? Just to close
14 the circle on --

15 THE COURT: Okay.

16 MR. ECKSTEIN: -- the point we were addressing a
17 moment ago. I think what I'm going to do, just in anticipation
18 of, I think, Your Honor's remarks is after this hearing's
19 concluded I would expect we'll schedule a call with the
20 consenting claimants. We'll, basically, brief them on the
21 issue that Your Honor has raised with respect to concerns about
22 not having a plan that might blow up in the event ultimately
23 Your Honor is not prepared to endorse the exculpation as
24 written.

25 THE COURT: Look, there could be some other little

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1 things. I don't know. I'm picking that one, because it was --

2 MR. ECKSTEIN: I believe the rest of the conditions
3 are, I think, appropriately dealt with through the language of
4 the document. We'll go back and look again, but I think it
5 doesn't tie the Court's hands to make modification. It
6 certainly doesn't give parties blowup rights, although the
7 exculpation, I think it does. And so I would expect to have a
8 conversation with the consenting claimants, and we would come
9 back to Your Honor. If we can do it today, we'll do it.

10 THE COURT: Okay.

11 MR. ECKSTEIN: But I think we can do it very quickly.
12 I imagine Ally has to weigh in, and the debtor has to weigh in
13 to make sure everybody understands what flexibility is being
14 created, and we absolutely, I think, would intend to present
15 the issue to Your Honor in connection with the confirmation
16 evidence and hopefully persuade Your Honor that in this case
17 the exculpation, as drafted, is appropriate.

18 THE COURT: Yeah, look, and this last part I made, if
19 it's consensual it's a different issue, so --

20 Let me ask one other question. With respect to the --
21 where is the section -- point me to the section in the
22 disclosure statement, Mr. Marinuzzi, that deals with the
23 explanation of the AFI release, the basis for the release.

24 MR. MARINUZZI: Your Honor, it's believe it's page --
25 I think, because this was addressed in connection with the

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1 objection filed by the JSNs.

2 THE COURT: Yes, it is.

3 MR. MARINUZZI: And I know we added additional
4 disclosures.

5 THE COURT: Yeah.

6 MR. MARINUZZI: Let me just try to find in my chart
7 where we've provided that disclosure.

8 So, Your Honor, yeah, on pages 81 through 86 of the
9 revised disclosure statement there's a discussion, which we
10 characterize as a robust discussion of the creditors'
11 committee's investigation, the examiner's investigation, and
12 the findings and conclusions in the examiner's report dealing
13 with the Ally settlement.

14 There's also, at various points, and I'll let Your
15 Honor look at pages 81 through 86 --

16 THE COURT: Here, in your omnibus reply with respect
17 to the JSNs, they had discussion about what the examiner
18 identified as claims against AFI. And in your omnibus reply
19 you said -- I don't remember what the number was -- 5.5
20 billion, and you said something like 3 billion of that is --

21 MR. MARINUZZI: Of that amount; some is less likely,
22 Your Honor.

23 THE COURT: -- characterized as weak or whatnot, not
24 probable.

25 I mean, what I didn't see, and maybe -- because

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1 there's a lot in here, and I've read it a bunch of times, but
2 maybe you'll point me to it. This comes back a little bit to
3 when I talked about the FHFA, how much value -- I don't see
4 anything in here that's attributing value to the release. AFI,
5 yes, it's contributing 2.1 billion. There's a discussion of
6 well, these claims have been identified. The proponents may
7 disagree as to some of the things that the examiner identified.
8 Okay. But I haven't seen anything that attempts to place a
9 value on the release that AFI will receive.

10 MR. MARINUZZI: Your Honor, I think the point -- a
11 couple points. One, there were some objections that asked us
12 to allocate as between --

13 THE COURT: I agree you don't have to allocate.

14 MR. MARINUZZI: We can't do that.

15 THE COURT: That I agree with.

16 MR. MARINUZZI: We can't do that.

17 THE COURT: I agree.

18 MR. MARINUZZI: And if you look at Exhibit 10 to the
19 disclosure statement --

20 THE COURT: Yes.

21 MR. MARINUZZI: -- what we've tried to do here is lay
22 out fairly the positions of the JSN and positions of AFI with
23 respect to the examiner's conclusion on the liability that AFI
24 would have otherwise had to the estate, basically, in the
25 absence of a settlement. I think there's a fair amount of

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1 detail in here.

2 Now, we want this plan to be confirmed, obviously, and
3 so we walked a fine line, because in the event the plan's not
4 confirmed we certainly don't want to be stuck with positions
5 with respect to claims that somebody might have to assert
6 against AFI --

7 THE COURT: Right.

8 MR. MARINUZZI: -- if this plan's not confirmed. So
9 we've got the point-counterpoint that's part of the disclosure
10 statement about why the examiner's report says that the claims
11 against AFI are worth so much, and then we've got AFI's
12 position that says -- and our brief says this too -- I think
13 you're overstating --

14 THE COURT: The examiner report doesn't say they're
15 worth so much. It identifies a potential claim and a dollar
16 amount and then ascribes a certain probability. That isn't
17 necessarily the value for settlement purposes, and it
18 doesn't -- properly so, doesn't elaborate on that.

19 Mr. Eckstein?

20 MR. ECKSTEIN: Your Honor, if I may? I don't mean to
21 interrupt the colloquy --

22 THE COURT: Yes?

23 MR. ECKSTEIN: -- but I think it's important. If Your
24 Honor looks at page 25 of the black-line to the disclosure
25 statement, which is Article 2, which is really the discussion

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1 that goes through in, I think, painstaking detail, the global
2 settlement and the implementation of the plan, and after
3 section A on page 26 talks about the global settlement, section
4 B begins with settlement of claims against Ally and plan
5 releases, and this is the section, which is quite early on in
6 the disclosure statement, that lays out in extensive detail the
7 nature of the claims against Ally, both estate and third party,
8 and the basis for the release.

9 THE COURT: Yes. So look, one of things -- and I'm
10 not saying you need to include this or not, but one of the --
11 when I thought through this last night -- actually, it was
12 after reading the JSN's -- rereading the JSN's objection and
13 then seeing the language that you propose to add. Metromedia
14 talks about what are the factors that Metromedia looks at in
15 determining whether the third-party nondebtor release is
16 appropriate is they talk about channeling injunction. Well,
17 you've, in effect, by setting up the securities litigation
18 trust, the borrower trust, various other specific pot -- you've
19 channeled -- and where there are claims that have been asserted
20 or potential claims that could be asserted against AFI, you
21 have channeled claims to specific funds. And then people
22 aren't being repaid in full, but -- far from it, but you have,
23 in fact -- for Mr. Eckstein's clients, set aside -- they can
24 say that their claim is worth billions, but you're creating,
25 assuming it's confirmed, a very large pot of money to satisfy

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1 those claims. Well, that seems to me, in some ways, that
2 that's a factor that Metromedia identified as supporting -- and
3 maybe we'll get to that at the time of confirmation when you go
4 through it, but I didn't see any statement in here that, in
5 fact, you know, some of the claims against AFI that are being
6 released have been channeled into specific funds available for
7 distribution to creditors here.

8 MR. ECKSTEIN: Your Honor, and I think, from a
9 disclosure standpoint I would submit we have ample
10 disclosure --

11 THE COURT: Okay.

12 MR. ECKSTEIN: -- and I actually would suggest that
13 given the significance of the third-party release issue and the
14 fact that this is, I would say, a somewhat extraordinary third-
15 party release structure as bankruptcy Chapter 11 cases go. It
16 is. It probably is appropriate to defer the full discussion of
17 it --

18 THE COURT: That's fine.

19 MR. ECKSTEIN: -- until it's been briefed and we can
20 present it.

21 THE COURT: That's fine.

22 MR. ECKSTEIN: But the reality is we are not -- other
23 than the borrower claims and the private securities claims and
24 the Carpenter's claims -- we are not channeling any other
25 claims --

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1 THE COURT: That's true.

2 MR. ECKSTEIN: -- to specific trusts.

3 THE COURT: Okay. All right. Let me leave it at
4 that. You need to get back to me with -- so, let's put it this
5 way. Subject to satisfying myself with the issue I've raised
6 today, which you'll advise me in due course, I'm prepared to
7 enter an order. You had to make some tweaks based on --

8 MR. MARINUZZI: To the ballots, Your Honor.

9 THE COURT: -- Santa Barbara, and you're going to
10 change the ballot.

11 MR. MARINUZZI: Correct.

12 THE COURT: And you'll let us -- just send me the
13 black-line of those pages rather than -- send the whole thing,
14 but specifically identify those pages that have any changes.
15 So, okay.

16 MR. MARINUZZI: Right. There are a couple more
17 objections we're going to go through, Your Honor.

18 THE COURT: Oh. Okay. I thought we had --

19 MR. MARINUZZI: We're not done. I wish we were.
20 We're not done. I'm sorry.

21 THE COURT: I wish we were done. Okay.

22 MR. MARINUZZI: Your Honor, we have a number of what
23 I'll call borrower objections. The next one, I believe, on the
24 list is --

25 THE COURT: Yes. Lawson.

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1 MR. MARINUZZI: -- Michelle Lawson's objection.

2 THE COURT: Is Ms. Lawson on the phone or present in
3 court? Overruled.

4 MR. MARINUZZI: Then we get to Ms. Nelson.

5 THE COURT: Is Ms. Nelson present in court or on the
6 phone? Overruled.

7 THE COURT: Yes.

8 MR. MARINUZZI: Mary McDonald. We resolved her
9 objection.

10 THE COURT: Okay.

11 MR. MARINUZZI: Basic Life Resources and Pamela Hill.
12 We were not able to resolve that.

13 THE COURT: Is anyone for Basic Life Resources or
14 Pamela Hill in court or on the telephone? Overruled.

15 MR. MARINUZZI: And Paul Corrado, Your Honor.

16 THE COURT: Is Mr. Corrado present in court or on the
17 telephone? Overruled.

18 MR. MARINUZZI: That's all of the objections, Your
19 Honor. There are some reservations of rights. I think we can
20 acknowledge people's rights are reserved.

21 THE COURT: Right. Okay.

22 MR. MARINUZZI: Your Honor --

23 THE COURT: So, basically, I'm conditionally agreeing
24 to approve the disclosure statement subject to seeing these
25 last changes and getting a response on the issue I raised with

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1 the coproponent's counsel.

2 MR. MARINUZZI: That's terrific, Your Honor. We'll do
3 what we can to try to get that done this afternoon, if
4 possible.

5 MR. ECKSTEIN: Your Honor, I don't want to preview
6 exactly when and what the outcome is, but can we come back to
7 Your Honor by calling chambers?

8 THE COURT: You can. I'm not here tomorrow.

9 MR. ECKSTEIN: So, if possible, today is better.

10 THE COURT: You can draw your own conclusion about
11 that. I'm not here tomorrow, Mr. Eckstein.

12 MR. MARINUZZI: Your Honor, not to prolong the hearing
13 any more than necessary, but to the extent the Court had any
14 questions on the order, the dates that were put in the order --

15 THE COURT: Let me just say, Mr. Eckstein, I'll be in
16 contact with my chambers tomorrow. Okay.

17 Hang on just one second.

18 Oh, I am here tomorrow. Tomorrow I have MF Global.
19 It's Friday I'm not here. MF Glo -- how could I forget? I
20 left a day out of the week. Okay.

21 MR. ECKSTEIN: We'll reach chambers.

22 THE COURT: Okay. I will be here tomorrow.

23 MR. MARINUZZI: Your Honor, to the extent the Court
24 wants to review the order we plugged dates in there for the
25 confirmation hearing on November 19th.

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1 THE COURT: Well, let me -- I do want to raise -- bear
2 with me. What did I do with it?

3 MR. MARINUZZI: And Your Honor, the marked order is in
4 a small bound booklet on your desk. Hopefully.

5 THE COURT: Yes, but I made some notes on a copy.

6 MR. MARINUZZI: Okay.

7 (Pause)

8 MR. MARINUZZI: Your Honor, if it's helpful I could
9 provide you with copies.

10 THE COURT: Sure. Just of the timeline. I had made
11 some notes on mine.

12 MR. MARINUZZI: Your Honor, if it's specific to the
13 timeline I could just -- I've got a copy of our timeline broken
14 out.

15 THE COURT: Yeah. That's what I had made notes on. I
16 had looked at that.

17 Ah, which -- I can't find my copy, but I remember the
18 questions I had. There are several things that are of concern
19 to me in your timeline. The deadline for objections,
20 responses -- well, it's the -- well. This had to do with
21 temporary allowance of voting. I didn't see when I was
22 supposed to have a hearing and what was going to have to -- you
23 had deadlines for their filing it and you responding to it, and
24 you have an October 23 deadline for entry of order granting
25 motion seeking temporary voting allowance, but there is going

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1 to be a phase 1 trial with the JSNs, and the time, the amount
2 of time for that has not -- the start date has not been
3 specifically set. I said early October. And the length of
4 time for that trial hasn't been set. And I'm likely to require
5 proposed findings of fact, conclusions of law. I'm going to be
6 very occupied with the phase 1 trial with the JSNs. And how
7 you think you're going to fit in hearings if there are
8 contested issues about temporary voting, boy, you're asking a
9 lot of me. I've already been kicking myself that I agreed to
10 schedule this hearing today, when I spent a good part of my
11 vacation interrupted reading in limine motions, immediately
12 coming back deciding in limine motions, having a trial last
13 Friday and Monday of this week, and then having to be prepared
14 to deal with the disclosure statement today.

15 I accomplished all that. But when I looked at this
16 schedule and I saw October, I don't see how it's going to
17 happen. I'll live with -- you can put this, but I'll tell you
18 right now that the commencement of the confirmation for
19 November 19th, I don't know whether it's really going to happen
20 then or not. I mean, some of it's going to depend on what's
21 going to happen. You start having contested hearings about
22 temporary voting, I don't know what's going to be involved yet.

23 MR. MARINUZZI: Your Honor, I think that's probably an
24 inspiration for people to agree on what the claim amount should
25 be for voting purposes rather than have to involve Your Honor,

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1 obviously. The November 19th date, which is just before
2 Thanksgiving, gives us --

3 THE COURT: Thank you. We'll all have a -- so I'll
4 have a very nice Thanksgiving. We'll commence the hearing, and
5 how long it's going to take, I don't know. It was going to
6 be -- that was going to include the phase 2 JSN trial if you
7 hadn't settled it. You really think starting a hearing
8 November 19th, you think it's going to be a day or two hearing?

9 MR. MARINUZZI: Your Honor, there's always hope.

10 THE COURT: There is. There is.

11 I don't mind. Oh, I'll agree to this schedule, but
12 everybody be on notice this schedule may not hold.

13 MR. ZIDE: Your Honor, Stephen Zide from Kramer, Levin
14 on behalf of the creditors' committee. We had actually
15 contacted chambers prior to setting this --

16 THE COURT: Didn't contact me.

17 MR. ZIDE: Noted. And we had thought that we had
18 reserved the days from November 19th to November 26th, which I
19 think are six days, for a trial and confirmation.

20 THE COURT: Oh, happy Thanksgiving. Yeah, that's --

21 MR. ZIDE: It was prior to Thanksgiving weekend.

22 THE COURT: Yes. But did you build in that if I have
23 to have contested hearings about voting, temporary voting?

24 MR. ZIDE: I think what we were contemplating there,
25 Your Honor, is that we would give those creditors a provisional

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1 ballot, which I think is in the order and is in the motion, and
2 we'd be able to resolve that prior to confirmation.

3 THE COURT: Look. I have bent over backwards to move
4 this case forward, and I'm prepared to do that, but the last
5 month has not been pleasant, okay, and I don't want a repeat of
6 it. And I'm looking at this schedule, and I see the repeat of
7 it right here, and with what -- I'm going to have a hearing
8 with a discovery dispute in the UMB case tomorrow. What it is,
9 I don't know. The number I do -- as you know, I do timed
10 trials. How many days are going to be set for that trial, I
11 don't know. I don't know how many witnesses people
12 contemplate. So there's a lot to be done.

13 I'll approve an order with this schedule, but
14 everybody be on notice that these days may not hold, okay?

15 MR. ECKSTEIN: Your Honor, I think, first of all, we
16 appreciate the imposition on the Court, and I think Your Honor
17 can appreciate the parties in the case empathize because we're,
18 obviously, experiencing a similar burden. And we recognize
19 that even though this is not what I would call the fastest
20 track confirmation schedule, it is going to be very difficult
21 to get through everything within the timetables. Right now --

22 THE COURT: If we have to have a confirmation trial
23 that really deals with -- and I don't know yet -- with what
24 it's going to have to deal with, the settlement of intercompany
25 claims and other issues in the global settlement or that affect

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1 the JSNs that our so-called phase 2, to be included in
2 confirmation, it's not going to be a short hearing.

3 MR. ECKSTEIN: Your Honor, I think we're all doing
4 everything we can to comply with milestones.

5 THE COURT: Okay.

6 MR. ECKSTEIN: And we --

7 THE COURT: I'm telling you -- I will --

8 MR. ECKSTEIN: -- understand the Court is being very
9 accommodating and --

10 THE COURT: I'll -- if you get an answer today you'll
11 get a disclosure statement approved today, but this schedule is
12 going to be subject -- it's not the only case I have, and I'll
13 deal with it. Of course, so --

14 MR. ECKSTEIN: I think --

15 THE COURT: -- nobody be surprised if dates get
16 pushed.

17 MR. ECKSTEIN: I think the best we can do today is to
18 try to resolve as many issues as we can, as we have tried to
19 do --

20 THE COURT: Have lunch with Mr. Uzzi and maybe
21 you'll --

22 MR. ECKSTEIN: I've had many lunches with Mr. Uzzi,
23 and I always enjoy them.

24 THE COURT: He's sitting with Mr. Walper. You can
25 have lunch with both of them.

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1 MR. ECKSTEIN: And I probably will do something that
2 involves a meal. But as Your Honor knows, it may or may not
3 affect the outcome of how these issues proceed, and I think
4 right now we hear Your Honor that there's only so much the
5 Court can do, no matter how hard one tries, and we recognize
6 that. And I think we'll make everybody well aware of those
7 issues, and we'll have to proceed as best we can.

8 Right now we are dealing with milestones, and I think
9 Your Honor is familiar with the fact that we have an effective
10 date milestone of December 15th. That --

11 THE COURT: I know you do.

12 MR. ECKSTEIN: -- is guiding --

13 THE COURT: And we pushed you --

14 MR. ECKSTEIN: -- what we're doing right now.

15 THE COURT: -- the date for conclusion of the FGIC
16 matter has been pushed to September 16th. There's a lot of
17 things that are stacked up here.

18 MR. ECKSTEIN: There are. The only observation
19 that -- without minimizing the burdens of the issues, we
20 fortunately do not have -- we do have a lot of consensus,
21 obviously, and I don't think we would be suggesting these dates
22 if there was not overwhelming consensus, which, as Your Honor
23 appreciates, is a tall order in and of itself. And so I think
24 given that fact, we're going to try to do the best we can --

25 THE COURT: Okay.

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1 MR. ECKSTEIN: -- to accommodate, not overburdening
2 the Court and meeting the schedule as best we can, and we'll
3 hear Your Honor's caution that we may back up at some point and
4 parties will have to deal with that, I think, in the next
5 couple of weeks.

6 THE COURT: All right. The Kessler matter. Mr.
7 Rosenbaum?

8 MS. NORA: Your Honor, is this a moment that Wendy
9 Alison Nora could be heard? I was on CourtCall the entire
10 time.

11 THE COURT: No, Ms. Nora. I called. I asked for you
12 to speak. You did not appear at the time. We're well past
13 that matter, so no, it is not a time for you to speak.

14 Mr. Rosenbaum? Go ahead.

15 MS. NORA: Well, Your Honor, I was on the phone, and I
16 was unable to be heard because of a connection problem, and
17 then I'm instructed not to interrupt the Court.

18 THE COURT: Ms. --

19 MS. NORA: I did say hello.

20 THE COURT: Ms. --

21 MS. NORA: I heard you say that I was connected to the
22 Court. Then I could not be heard. It will take me two minutes
23 to state --

24 THE COURT: Ms. Nora, I ruled on your objection. I
25 overruled it. I overruled it based on the papers.

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1 Mr. Rosenbaum, let's move on.

2 MS. NORA: Thank you, Your Honor.

3 MR. ROSENBAUM: Your Honor, Norm Rosenbaum, Morrison &
4 Foerster. Your Honor, we have been discussing the issues Your
5 Honor raised. I believe we have a solution. If we could
6 indulge the Court? If we could appear before Your Honor after
7 a break, if you want to do --

8 THE COURT: I don't think so.

9 MR. ROSENBAUM: Okay. Then the other alternative
10 would be --

11 THE COURT: Tell me what your solution is.

12 MR. ROSENBAUM: The solution is to -- we have to make
13 changes to the settlement agreement to account for the method
14 in which the judgment reduction would be applied and
15 modifications to the class notice to put the class on notice
16 that this is how we're proposing the notification, as well as
17 the proposal of PNC, so the class is informed of what the
18 issues are.

19 THE COURT: I have a couple of concerns. First, can I
20 approve it without you filing it on ECF and giving -- I mean,
21 what I had was a motion to approve -- preliminarily approve a
22 settlement, terms of which were set out. Okay. I'm not trying
23 to slow you down, Mr. Rosenbaum. I am concerned that -- well,
24 I'll tell you what. I have a hearing set for 2 o'clock
25 tomorrow with respect to the UMB case, a discovery dispute.

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1 I'll hear you at 1:30.

2 MR. ROSENBAUM: Thank you, Your Honor.

3 MR. FLANIGAN: Thank you, Your Honor.

4 For the record, I'm Dan Flanigan appearing for the
5 Kessler class.

6 THE COURT: Didn't want to make your life complicated,
7 Mr. Flanigan, but anyway, we'll deal with it tomorrow at 1:30.

8 MR. FLANIGAN: We're solving it, Your Honor.

9 MR. MARINUZZI: Your Honor, I'm trying to find my
10 agenda in the pile of papers here, but I think that concludes
11 the agenda for today.

12 THE COURT: Let me just say. I congratulate you all
13 for -- this is another big milestone. We've got lots of steps
14 to do, but just to get to this point, I think no one should
15 misinterpret any of my comments along the way. There's a lot
16 to be done, but you've accomplished an enormous amount. That
17 doesn't mean you're going to get this plan confirmed. We'll
18 see. But you all -- and I know you've all worked tirelessly to
19 get to this point and the Court appreciates that. And I don't
20 think it's an easy road. I hope you resolve the remaining
21 disputes, and that this -- when we get to confirmation, this
22 will be as close to a consensual confirmation as is possible.

23 Having said that, we're adjourned.

24 MR. MARINUZZI: Thank you, Your Honor.

25 (Whereupon these proceedings were concluded at 12:33 PM))

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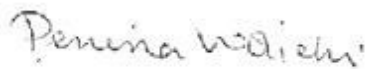
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I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Date: August 22, 2013

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